TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

This title was enacted by act June 25, 1948, ch. 646, § 1, 62 Stat. 869

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 42 sections 3789h, 5055, 8220, 8433; title 48 sections 1694, 1694c.

PART I—ORGANIZATION OF COURTS

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6.	Bankruptcy Courts	151

AMENDMENTS

1978—Pub. L. 95-598, title II, § 201(b), title IV, § 402(b), Nov. 6, 1978, 92 Stat. 2660, 2682, added the item relating to chapter 6 in the analysis of chapters comprising Part I, effective Apr. 1, 1984.

EX. ORD. NO. 11992. COMMITTEE ON SELECTION OF FEDERAL JUDICIAL OFFICERS

Ex. Ord. No. 11992, May 24, 1977, 42 F.R. 27195, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), it is hereby ordered as follows:

SECTION 1. *Establishment of the Committee.* There is hereby established the Committee on Selection of Federal Judicial Officers, hereinafter referred to as the Committee. The Committee shall consist of a Chairman and six other members to be appointed by the President.

SEC. 2. *Functions.* When requested by the President, the Committee shall conduct inquiries to identify persons who may be qualified to serve as Federal judicial officers, other than United States Circuit Judges or District Judges, and shall conduct investigations of those persons to determine their qualifications.

SEC. 3. *Procedures; Report.* (a) When notified by the President that he desires its assistance in filling a Federal judicial vacancy, other than a United States Circuit Court or District Court vacancy, the Committee shall conduct inquiries to identify persons who may be qualified to serve in the position and shall conduct further inquiries to determine those persons' qualifications.

(b) In conducting its inquiries the Committee shall follow any procedures established by the President in his letter of notification or by the Attorney General acting on behalf of the President.

(c) The Committee shall submit to the President and to the Attorney General, within 60 days from the date it is notified by the President that he desires its assistance, a report listing the names of no more than five persons whom the Committee considers well qualified to serve in the position. In determining which persons are well qualified the Committee shall apply criteria established by the President or by the Attorney General acting on behalf of the President.

(d) The Committee shall conduct such additional inquiries and submit such additional reports as may be requested by the President.

(e) The Committee shall perform no function except when requested by the President to assist him in filling a vacancy.

SEC. 4. *Ineligibility of Committee Members.* No member of the Committee shall be eligible to be nominated to fill a position as a Federal judicial officer with respect to which the Committee's assistance has been requested.

SEC. 5. *Cooperation by Executive Agencies.* The Committee is authorized to request, through its Chairman, from any Executive department or agency such information or assistance as the Committee deems necessary to carry out its functions under this Order. Each department or agency shall, to the extent permitted by law, furnish such information or assistance to the Committee. The Committee also is authorized to request from any State agency such information and assistance as the Committee deems necessary, and to obtain such information and assistance to the extent permitted by State law.

SEC. 6. *Travel Expenses; Administrative Support; Financing.* (a) Members of the Committee shall serve without compensation. While engaged in the work of the Committee, members may receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

(b) The Attorney General shall furnish to the Committee necessary staff, supplies, facilities and other administrative services.

(c) All necessary expenses incurred in connection with the work of the Committee, to the extent permitted by law, shall be paid from funds available to the Attorney General.

SEC. 7. *Federal Advisory Committee Act Functions.* Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.), except that of reporting annually to the Congress, which are applicable to the Committee, shall be performed by the Attorney General in accordance with the guidelines and procedures established by the Office of Management and Budget.

SEC. 8. *Termination of the Committee.* The Committee shall terminate on December 31, 1978, unless sooner extended.

JIMMY CARTER.

EXTENSION OF TERM OF COMMITTEE ON SELECTION OF FEDERAL JUDICIAL OFFICERS

Term of the Committee on Selection of Federal Judicial Officers extended until Dec. 31, 1980, see Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of Appendix to Title 5, Government Organization and Employees.

CHAPTER 1—SUPREME COURT

§ 1. Number of justices; quorum

SHORT TITLE OF 1978 AMENDMENTS

Pub. L. 95-539, § 1, Oct. 28, 1978, 92 Stat. 2040, provided: 'That this Act [enacting sections 1827 and 1828 of this title, amending sections 602 to 604 and 1920 of

this title, enacting provisions set out as notes under section 602 of this title, and repealing a provision set out as a note under section 602 of this title] may be cited as the 'Court Interpreters Act'."

Pub. L. 95-408, § 1, Oct. 2, 1978, 92 Stat. 883, provided that: "This Act [amending sections 89, 93, 97, 98, 104, 112, 114, 133 of this title and enacting provisions set out as a note under section 89 of this title] may be cited as the 'Federal District Court Organization Act of 1978'."

§ 5. Salaries of justices

References in Text

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

Salary Rate Limitations for Use of Funds for Fiscal Year 1980

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95-391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96-86, set out as a note under section 5318 of Title 5, Government Organization and Employees.

Increase of Salaries

Salaries of the Chief Justice and Associate Justices increased to $79,100 and $76,000, respectively, effective on the first day of the first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95-391, title III § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $75,000 for the Chief Justice and $72,000 for the Associate Justices.

CHAPTER 3—COURTS OF APPEALS

Sec.
46. Assignment of judges; panels; hearings; quorum.
49. Assignment of judges to division to appoint special prosecutors.

Amendments

1978—Pub. L. 95-521, title VI, § 602(b), Oct. 26, 1978, 92 Stat. 1874, added item 49.

Pub. L. 95-486, § 5(c), Oct. 20, 1978, 92 Stat. 1633, substituted "panels" for "divisions" in item 46.

§ 41. Number and composition of circuits

Appeals Court Administrative Units

Pub. L. 95-486, § 6, Oct. 20, 1978, 92 Stat. 1633, provided that: "Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its en banc function by such number of members of its en banc courts as may be prescribed by rule of the court of appeals."

§ 44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits	*Number of judges*
District of Columbia	11
First	4
Second	11
Third	10
Fourth	10
Fifth	26
Sixth	11
Seventh	9
Eighth	9
Ninth	23
Tenth	8

[*See main edition for text of (b) to (d)*]

(As amended Oct. 20, 1978, Pub. L. 95-486, § 3(b), 92 Stat. 1632.)

Amendments

1978—Subsec. (a). Pub. L. 95-486 altered the number of permanent circuit judgeships in the named circuits as follows:

Circuits	*Former*	*New*
District of Columbia	9	11
First	3	4
Second	9	11
Third	9	10
Fourth	7	10
Fifth	15	26
Sixth	9	11
Seventh	8	9
Eighth	8	9
Ninth	13	23
Tenth	7	8

References in Text

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

Salary Rate Limitations for Use of Funds for Fiscal Year 1980

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95-391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96-86, set out as a note under section 5318 of Title 5, Government Organization and Employees.

Increase of Salaries

Salaries of circuit judges increased to $60,700 effective on the first day of the first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7 1978, 43 F.R. 46823, set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95-391, title III, § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $57,500.

Additional Circuit Judgeships

Section 3(a) of Pub. L. 95-486 provided that: "The President shall appoint, by and with the advice and consent of the Senate, one additional circuit judgeship for the first circuit, two additional circuit judgeships for the second circuit, one additional circuit judgeship for the third circuit, three additional circuit judgeships for the fourth circuit, eleven additional circuit judgeships for the fifth circuit, two additional circuit judgeships for the sixth circuit, one additional circuit

judgeship for the seventh circuit, one additional circuit judgeship for the eighth circuit, ten additional circuit judgeships for the ninth circuit, one additional circuit judgeship for the tenth circuit, and two additional circuit judgeships for the District of Columbia."

EXECUTIVE ORDER NO. 11972

Ex. Ord. No. 11972, Feb. 14, 1977, 42 F.R. 9659, as amended by Ex. Ord. No. 11993, May 24, 1977, 42 F.R. 27197, formerly set out as a note under this section, which related to the United States Circuit Judge Nominating Commission, was revoked by Ex. Ord. No. 12059, May 11, 1978, 43 F.R. 20949, set out as a note below.

EX. ORD. NO. 12059. UNITED STATES CIRCUIT JUDGE NOMINATING COMMISSION

Ex. Ord. No. 12059, May 11, 1978, 43 F.R. 20949, as amended by Ex. Ord. No. 12097, Nov. 8, 1978, 43 F.R. 52455, provided:

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, in order to clarify and amend the responsibilities of the various panels of the United States Circuit Judge Nominating Commission and to continue the Commission, it is hereby ordered as follows:

SECTION 1. *Establishment of the Commission.* There is hereby established the United States Circuit Judge Nominating Commission (hereinafter referred to as the "Commission"). The Commission shall be composed of thirteen panels, each of which shall, upon the request of the President, recommend for nomination as circuit judges persons whose character, experience, ability and commitment to equal justice under law, fully qualify them to serve in the Federal judiciary. Except as indicated below, each panel shall serve a geographic area set forth in 28 U.S.C. 41. The panels shall be as follows:

(1) Panel for the District of Columbia Circuit;
(2) Panel for the First Circuit;
(3) Panel for the Second Circuit;
(4) Panel for the Third Circuit;
(5) Panel for the Fourth Circuit;
(6) Panel for the Eastern Fifth Circuit, for the States of Alabama, Florida, Georgia and Mississippi;
(7) Panel for the Western Fifth Circuit, for the States of Louisiana and Texas, and the Canal Zone;
(8) Panel for the Sixth Circuit;
(9) Panel for the Seventh Circuit;
(10) Panel for the Eighth Circuit;
(11) Panel for the Southern Ninth Circuit, for the States of Arizona, California, and Nevada;
(12) Panel for the Northern Ninth Circuit, for the States of Alaska, Hawaii, Idaho, Montana, Oregon and Washington, and the Territory of Guam; and
(13) Panel for the Tenth Circuit.

A panel shall be designated as, *e.g.*, the "United States Circuit Judge Nominating Panel for the First Circuit."

SEC. 2. *Membership.* (a) The membership of the Commission shall consist of the combined memberships of the panels. The President may appoint a member of the Commission as its Chairman, with such duties as the President may assign.

(b) A panel shall be composed of a Chairman and such other members as the President may appoint.

(c) Each panel shall include members of both sexes and members of minority groups, and each panel shall include at least one lawyer from each State within a panel's area of responsibility.

(d) All members of the panel for the District of Columbia Circuit shall be persons residing within the District of Columbia or within twenty miles of its boundaries.

SEC. 3. *Functions of Panels.* (a) A panel shall begin functioning when the President or his designee notifies its Chairman that the President desires the panel's assistance in aid of his constitutional responsibility and discretion to select a nominee to fill a vacancy or vacancies on a United States Court of Appeals. Upon such notification, the panel shall:

(1) Give public notice of the vacancy or vacancies within the relevant geographic area, inviting suggestions as to potential nominees;
(2) Conduct inquiries to identify potential nominees;
(3) Conduct inquiries to identify those persons among the potential nominees who are well qualified to serve as a United States Circuit Judge; and
(4) Report to the President, within the time specified in the notification of the vacancy or vacancies, the results of its activities, including its recommendations as to the persons whom the panel considers best qualified to fill the vacancy or vacancies.

(b) The Panel for the District of Columbia Circuit shall have the additional function of recommending nominees for the United States District Court for the District of Columbia. In exercising this function, the panel shall use the standards set forth in Executive Order 12097 [set out as a note under section 133 of this title] and shall forward its recommendations to the Attorney General.

SEC. 4. *Standards for Selection of Proposed Nominees.* (a) Before transmitting to the President the names of the persons it deems best qualified to fill an existing vacancy or vacancies, a panel shall have determined:

(1) That those persons are members in good standing of at least one state bar, or the District of Columbia bar, and members in good standing of any other bars of which they may be members;
(2) That they possess, and have reputations for, integrity and good character;
(3) That they are of sound health;
(4) That they possess, and have demonstrated, outstanding legal ability and commitment to equal justice under law; and
(5) That their demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States Circuit Judge.

(b) In selecting persons whose names will be transmitted to the President, a panel shall consider whether the training, experience, or expertise of certain of the well qualified individuals would help to meet a perceived need of the court of appeals on which the vacancy or vacancies exist.

(c) To implement the above standards, a panel may adopt such additional criteria or guidelines as it considers appropriate for the identification of potential nominees and the selection of those best qualified to serve as United States Circuit Judges.

(d) Each panel is encouraged to make special efforts to seek out and identify well qualified women and members of minority groups as potential nominees.

SEC. 5. *Ineligibility of Commission Members.* No person shall be considered by a panel as a potential nominee while serving as a Commission member or for a period of one year after termination of such service.

SEC. 6. *Travel Expenses and Financing.* (a) Members of the Commission shall receive no compensation from the Government of the United States for their service as members of the Commission, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703) for persons intermittently employed in the government service.

(b) All necessary expenses incurred in connection with the work of the Commission shall be paid from the appropriation for "Unanticipated Needs" in the Executive Office Appropriations Act or from such other funds as may be available.

(c) Expenditures authorized by this Section may be made only after the President has notified a panel's chairman that he desires the panel's assistance in accordance with Section 3 above, and before the termination of appointments to the panel in accordance with Section 7 below.

SEC. 7. *Term of Membership.* Unless extended by the President, each appointment to a panel shall termi-

nate thirty days after submission of the panel's report to the President.

SEC. 8. *Termination of Commission.* The Commission shall terminate on December 31, 1978, unless sooner extended by the President.

SEC. 9. *Revocations.* Executive Order No. 11972 and Executive Order No. 11993 are hereby revoked.

JIMMY CARTER.

EXTENSION OF TERM OF UNITED STATES CIRCUIT JUDGE NOMINATING COMMISSION

Term of the United States Circuit Judge Nominating Commission extended until Dec. 31, 1980, see Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of Appendix to Title 5, Government Organization and Employees.

§ 45. Chief judges; precedence of judges

EFFECTIVE DATE OF 1958 AMENDMENT

Section 3 of Pub. L. 85-593, as amended by Pub. L. 95-486, § 4, Oct. 20, 1978, 92 Stat. 1632, provided that: "The amendments to sections 45 and 136 of title 28 of the United States Code, made by this Act shall take effect at the expiration of one year from the date of enactment [Aug. 6, 1958], of this Act."

§ 46. Assignment of judges; panels; hearings; quorum

[*See main edition for text of (a) and (b)*]

(c) Cases and controversies shall be heard and determined by a court or panel of not more than three judges, unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service.

[*See main edition for text of (d)*]

(As amended Oct. 20, 1978, Pub. L. 95-486, § 5(a), (b), 92 Stat. 1633.)

AMENDMENTS

1978—Pub. L. 95-486, § 5(b), substituted "panels" for "divisions" in section catchline.

Subsec. (c). Pub. L. 95-486, § 5(a), substituted "panel" for "division" and struck out provision authorizing a retired circuit judge to sit as a judge of the court in banc in the rehearing of a case if he sat in the court or division in the original hearing of such case.

§ 49. Assignment of judges to division to appoint special prosecutors

(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing special prosecutors.

(b) Except as provided under subsection (f) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

(c) In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.

(d) The Chief Justice of the United States shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.

(e) Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.

(f) Except as otherwise provided in chapter 39 of this title, no member of such division of the court who participated in a function conferred on the division under chapter 39 of this title involving a special prosecutor shall be eligible to participate in any judicial proceeding concerning a matter which involves such special prosecutor while such special prosecutor is serving in that office or which involves the exercise of such special prosecutor's official duties, regardless of whether such special prosecutor is still serving in that office.

(Added Pub. L. 95-521, title VI, § 602(a), Oct. 26, 1978, 92 Stat. 1873.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), is Oct. 26, 1978.

Chapter 39 of this title, referred to in subsec. (f), means chapter 39 (§ 591 et seq.) of this title which was added by Pub. L. 95-521.

EFFECTIVE DATE

Section effective Oct. 26, 1978, see section 604 of Pub. L. 95-521, set out as an Effective Date note under section 591 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 593, 595 of this title.

CHAPTER 5—DISTRICT COURTS

SHORT TITLE OF 1978 AMENDMENTS

For Short Title of Pub. L. 95-408, Oct. 2, 1978, 92 Stat. 883, as "Federal District Court Organization Act of 1978", see Short Title note set out under section 1 of this title.

§ 84. California

STUDY OF JUDICIAL BUSINESS IN CENTRAL DISTRICT, CALIFORNIA AND EASTERN DISTRICT, NEW YORK AND RECOMMENDATIONS FOR CREATION OF NEW JUDICIAL DISTRICTS

Pub. L. 95-573, § 5, Nov. 2, 1978, 92 Stat. 2458, provided that: "Within one year after the date of enactment of this Act [Nov. 2, 1978], the Director of the Administrative Office of the United States Courts shall conduct a comprehensive study of the judicial business of the Central District of California and the Eastern District of New York, and shall make recommendations to the Congress with respect to the need for creation of new judicial districts from portions of the judicial districts referred to in this section or the immediately surrounding judicial districts."

§ 89. Florida

Florida is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Florida.

Northern District

(a) The Northern District comprises the counties of Alachua, Bay, Calhoun, Dixie, Escambia,

Franklin, Gadsden, Gilchrist, Gulf, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington.

Court for the Northern District shall be held at Gainesville, Marianna, Panama City, Pensacola, and Tallahassee.

Middle District

(b) The Middle District comprises the counties of Baker, Bradford, Brevard, Charlotte, Citrus, Clay, Columbia, De Soto, Duval, Flagler, Hamilton, Hardee, Hernando, Hillsborough, Lake, Lee, Manatee, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, St. Johns, Sarasota, Seminole, Sumter, Suwannee, Union, and Volusia.

Court for the Middle District shall be held at Fernandina, Fort Myers, Jacksonville, Live Oak, Ocala, Orlando, Saint Petersburg, and Tampa.

Southern District

(c) The Southern District comprises the counties of Broward, Collier, Dade, Glades, Hendry, Highlands, Indian River, Martin, Monroe, Okeechobee, Palm Beach, and St. Lucie.

Court for the Southern District shall be held at Fort Lauderdale, Fort Pierce, Key West, Miami, and West Palm Beach.

(As amended Oct. 2, 1978, Pub. L. 95-408, § 4(a), 92 Stat. 884.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-408, § 4(a)(1), added Madison to the counties comprising the Northern District.

Subsec. (b). Pub. L. 95-408, § 4(a)(2), deleted Madison from the counties comprising the Middle District.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Section 5 of Pub. L. 95-408 provided that:

"(a) The amendments made by this Act [amending sections 89, 93, 97, 98, 104, 112, 114, and 133 of this title and enacting provisions set out as a note under section 81 of this title] shall take effect 180 days after the date of enactment of this Act [Oct. 2, 1978].

"(b) Nothing in this Act [amending sections 89, 93, 97, 98, 104, 112, 114, and 133 of this title and enacting provisions set out as a note under section 81 of this title] shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act."

§ 93. Illinois

Illinois is divided into three judicial districts to be known as the Northern, Central, and Southern Districts of Illinois.

Northern District

(a) The Northern District comprises two divisions.

(1) The Eastern Division comprises the counties of Cook, De Kalb, Du Page, Grundy, Kane, Kendall, Lake, La Salle, McHenry, and Will.

Court for the Eastern Division shall be held at Chicago.

(2) The Western Division comprises the counties of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago.

Court for the Western Division shall be held at Freeport and Rockford.

Central District

(b) The Central District comprises the counties of Adams, Brown, Bureau, Cass, Champaign, Christian, Coles, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Kankakee, Knox, Livingston, Logan, McDonough, McLean, Macoupin, Macon, Marshall, Mason, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Warren, and Woodford.

Court for the Central District shall be held at Danville, Peoria, Quincy, Rock Island, and Springfield.

Southern District

(c) The Southern District comprises the counties of Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, and Williamson.

Court for the Southern District shall be held at Alton, Benton, Cairo, and East Saint Louis.

(As amended Oct. 2, 1978, Pub. L. 95-408, § 4(b)(1), 92 Stat. 884; Nov. 2, 1978, Pub. L. 95-573, § 1, 92 Stat. 2458.)

AMENDMENTS

1978—Pub. L. 95-408 substituted in introductory provisions "Northern, Central, and Southern Districts of Illinois" for "Northern, Southern, and Eastern Districts of Illinois".

Subsec. (a)(1). Pub. L. 95-573, § 1(1), struck out Kankakee from the counties comprising the Eastern Division of the Northern District.

Pub. L. 95-408 added Kankakee to the counties comprising the Eastern Division of the Northern District.

Subsec. (b). Pub. L. 95-573, § 1(2), added Kankakee to the counties comprising the Central District.

Pub. L. 95-408 substituted "Central District" for "Southern District" in subsec. heading, struck out the subsec. (b)(1) and (2) designations, which divided the former Southern District into a Northern and Southern Division, and in such newly created Central District, added the counties of Champaign, Coles, Douglas, Edgar, Ford, Iroquois, Moultrie, Piatt, Shelby, and Vermilion to, and deleted the counties of Bond, Calhoun, Jersey, and Madison from, those counties comprising the new Central District, and substituted provisions for the holding of a term of Court for the Central District at Danville, Peoria, Quincy, Rock Island, and Springfield for provisions for the holding of a term of Court for the Northern Division of the former Southern District at Peoria and Rock Island and for the Southern Division of the former Southern District at Alton, Quincy, and Springfield.

Subsec. (c). Pub. L. 95-408 substituted "Southern District" for "Eastern District" in subsec. heading, and in such Southern District added the counties of Bond, Calhoun, Jersey, and Madison to, and deleted the counties of Champaign, Coles, Douglas, Edgar, Ford, Iroquois, Kankakee, Moultrie, Piatt, Shelby and Vermilion from, those counties comprising the Southern District, and substituted provisions for the holding of a term of Court for the Southern District at Alton, Benton, Cairo, and East Saint Louis for provisions for the holding of a term of Court for the Eastern District at Benton, Cairo, Danville, and East Saint Louis.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 6 of Pub. L. 95-573, as amended by Pub. L. 96-4, § 2, Mar. 30, 1979, 93 Stat. 7, provided that:

"(a) Except as provided in subsection (b) of this section, the provisions of this Act [amending sections 93, 99, 112 and 118 of this title and enacting a provision set out as a note under section 84 of this title] shall take effect 180 days after the date of enactment of this Act [Nov. 2, 1978].

"(b)(1) The provisions of section 5 of this Act [set out as a note under section 84 of this title] shall take effect on the date of enactment of this Act [Nov. 2, 1978].

"(2) The provisions of the first section of this Act [amending this section] shall take effect on March 31, 1979.

"(c) Nothing in this Act [amending sections 93, 99, 112 and 118 of this title and enacting provisions set out as a note under section 84 of this title] shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act."

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95-408 effective 180 days after Oct. 2, 1978, such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95-408, set out as an Effective Date of 1978 Amendment note under section 89 of this title.

DISTRICT JUDGES, UNITED STATES ATTORNEYS, ASSISTANT UNITED STATES ATTORNEYS, AND UNITED STATES MARSHALS FOR CENTRAL AND SOUTHERN DISTRICTS; DESIGNATION; TENURE; APPOINTMENT; GRAND JURY

Pub. L. 95-408, § 4(b)(2) to (4), as added Pub. L. 96-4, § 1, Mar. 30, 1979, 93 Stat. 6, provided that:

"(2) The district judge for the Eastern District of Illinois in office on the effective date of this Act [180 days after Oct. 2, 1978] who is senior in commission shall, on and after the effective date of this Act, be a district judge for the Southern District of Illinois. The remaining district judge for the Eastern District of Illinois who is in office on the effective date of this Act and the district judges for the Southern District of Illinois who are in office on the effective date of this Act shall, on and after the effective date of this Act, be district judges for the Central District of Illinois. The President shall appoint, by and with the advice and consent of the Senate, a second district judge for the Southern District of Illinois.

"(3) This section does not in any manner affect the tenure of the United States attorney, the assistant United States attorneys, or the United States marshal for the Eastern District of Illinois or for the Southern District of Illinois who are in office on the effective date of this Act [180 days after Oct. 2, 1978]. The United States attorney, the assistant United States attorneys, and the United States marshal for the Eastern District and for the Southern District of Illinois shall, on the effective date of this Act, become the United States attorney, the assistant United States attorneys, and the United States marshal for the Southern District and for the Central District of Illinois, respectively.

"(4) Notwithstanding section 3240 of title 18, United States Code, any grand jury impaneled on or after the effective date of this Act [180 days after Oct. 2, 1978] by a district court for the Central District or the Southern District of Illinois may inquire into and return indictments charging offenses against the criminal laws of the United States alleged to have been committed anywhere within the territory of the respective judicial districts as such districts were constituted before or after the effective date of this Act."

§ 97. Kentucky

Kentucky is divided into two judicial districts to be known as the Eastern and Western Districts of Kentucky.

Eastern District

(a) The Eastern District comprises the counties of Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Campbell, Carroll, Carter, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup, Harlan, Harrison, Henry, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Trimble, Wayne, Whitley, Wolfe, and Woodford.

Court for the Eastern District shall be held at Ashland, Catlettsburg, Covington, Frankfort, Jackson, Lexington, London, Pikeville, and Richmond.

[*See main edition for text of* (b)]

(As amended Oct. 2, 1978, Pub. L. 95-408, § 2(a), 92 Stat. 883.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-408 provided for the holding of a term of court at Ashland in the Eastern District of Kentucky.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95-408 effective 180 days after Oct. 2, 1978, such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95-408, set out as an Effective Date of 1978 Amendment note under section 89 of this title.

§ 98. Louisiana

Louisiana is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of Louisiana.

[*See main edition for text of* (a) *and* (b)]

Western District

(c) The Western District comprises the parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, Jefferson Davis, De Soto, East Carroll, Evangeline,

Franklin, Grant, Iberia, Jackson, Lafayette, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, and Winn.

Court for the Western District shall be held at Alexandria, Lafayette, Lake Charles, Monroe, Opelousas, and Shreveport.

(As amended Oct. 2, 1978, Pub. L. 95-408, § 3(a), 92 Stat. 883.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-408 struck out the par. (1) to (6) designations which had divided the parishes of the Western District into six divisions.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95-408 effective 180 days after Oct. 2, 1978, such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95-408, set out as an Effective Date of 1978 Amendment note under section 89 of this title.

§ 99. Maine

Maine constitutes one judicial district.

Court shall be held at Bangor and Portland.

(As amended Nov. 2, 1978, Pub. L. 95-573, § 2, 92 Stat. 2458.)

AMENDMENTS

1978—Pub. L. 95-573 struck out provision for two separate divisions, (1) the Northern Division comprising the counties of Aroostook, Hancock, Penobscot, Piscataquis, Somerset, Waldo, and Washington and (2) the Southern Division comprising the counties of Androscoggin, Cumberland, Franklin, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, and York.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-573 effective 180 days after Nov. 2, 1978, see section 6 of Pub. L. 95-573, set out as an Effective Date of 1978 Amendment note under section 93 of this title.

§ 104. Mississippi

Mississippi is divided into two judicial districts to be known as the northern and southern districts of Mississippi.

Northern District

(a) The northern district comprises four divisions.

(1) Eastern division comprises the counties of Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Prentiss, Tishomingo, and Winston.

Court for the eastern division shall be held at Aberdeen, Ackerman, and Corinth.

[*See main edition for text of* (2) *to* (4); (b)]

(As amended Oct. 2, 1978, Pub. L. 95-408, § 2(b), 92 Stat. 883.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-408 provided for the holding of a term of court at Corinth in the Eastern Division of the Northern District.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95-408 effective 180 days after Oct. 2, 1978, such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95-408, set out as an Effective Date of 1978 Amendment note under section 89 of this title.

§ 112. New York

New York is divided into four judicial districts to be known as the Northern, Southern, Eastern, and Western Districts of New York.

Northern District

(a) The Northern District comprises the counties of Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Ulster, Warren, and Washington.

Court for the Northern District shall be held at Albany, Auburn, Binghamton, Malone, Syracuse, and Utica.

Southern District

(b) The Southern District comprises the counties of Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester and concurrently with the Eastern District, the waters within the Eastern District.

Court for the Southern District shall be held at New York and White Plains.

Eastern District

(c) The Eastern District comprises the counties of Kings, Nassau, Queens, Richmond, and Suffolk and concurrently with the Southern District, the waters within the counties of Bronx and New York.

Court for the Eastern District shall be held at Brooklyn and Hempstead (including the village of Uniondale).

[*See main edition for text of* (d)]

(As amended Apr. 28, 1978, Pub. L. 95-271, § 1, 92 Stat. 221; Oct. 2, 1978, Pub. L. 95-408, § 4(c), 92 Stat. 885; Nov. 2, 1978, Pub. L. 95-573, § 3, 92 Stat. 2458.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-408, § 4(c)(1), added the counties of Columbia, Greene and Ulster to those counties comprising the Northern District of New York.

Subsec. (b). Pub. L. 95-573 provided for the holding of a term of court at White Plains in the Southern District of New York.

Pub. L. 95-408, § 4(c)(2), deleted Columbia, Greene, and Ulster from those counties comprising the Southern District of New York.

Subsec. (c). Pub. L. 95-271 substituted "and Hempstead (including the village of Uniondale)" for "Mineola, and Westbury"

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95-408 effective 180 days after Oct. 2, 1978, such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95-408, set out as an Effective Date of 1978 Amendment note under section 89 of this title.

PRETERMISSION OF REGULAR SESSION OF COURT AT HEMPSTEAD AND HOLDING OF SPECIAL SESSION AT WESTBURY; PROCEDURES APPLICABLE, APPROPRIATIONS, ETC.

Sections 2 to 5 of Pub. L. 95-271 provided that:

"SEC. 2. The United States District Court for the Eastern District of New York, by order made anywhere within its district, may pretermit the regular session of court at Hempstead until Federal quarters and accommodations are available and ready for occupancy, except that for the entire period and such pretermission, a special session of the court shall be held at Westbury. Pretermission may be ordered without regard to the provisions of section 140(a) of title 28, United States Code.

"SEC. 3. Notwithstanding the provisions of section 142 of title 28, United States Code, the Administrator of General Services, at the request of the Director of the Administrative Office of the United States Courts, shall continue to provide existing quarters and accommodations at Westbury for the duration of the special session held pursuant to section 2 of this Act. Appropriations to the judicial branch of Government shall be available to the Director to make necessary disbursements for such quarters and accommodations, and to pay user charges as required by section 210 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490), at rates otherwise authorized by law.

"SEC. 4. Notwithstanding the provisions of section 456 of title 28, United States Code, any judge, and any officer or employee of the judicial branch, whose official station is, on the day before the date of enactment of this Act [Apr. 28, 1978], Westbury, may maintain that official station for the duration of the special session held pursuant to section 2 of this Act.

"SEC. 5. The Director of the Administrative Office of the United States Courts may pay travel and transportation expenses in accordance with subchapter II, chapter 57 of title 5, United States Code, to any officer or employee of the judicial branch whose official station changes as a consequence of this Act [enacting this provision and amending subsec. (c) of this section] and who relocates his residence incident to such change of official station."

§ 114. North Dakota

North Dakota constitutes one judicial district comprising four divisions.

(1) The Southwestern Division comprises the counties of Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Logan, McIntosh, McLean, Mercer, Morton, Oliver, Sioux, Slope, and Stark.

Court for the Southwestern Division shall be held at Bismarck.

(2) The Southeastern Division comprises the counties of Barnes, Cass, Dickey, Eddy, Foster, Griggs, La Moure, Ransom, Richland, Sargent, Steele, and Stutsman.

Court for the Southeastern Division shall be held at Fargo.

(3) The Northeastern Division comprises the counties of Benson, Cavalier, Grand Forks, Nelson, Pembina, Ramsey, Rolette, Towner, Traill, and Walsh.

Court for the Northeastern Division shall be held at Grand Forks.

(4) The Northwestern Division comprises the counties of Bottineau, Burke, Divide, McHenry, McKenzie, Mountrail, Pierce, Renville, Sheridan, Ward, Wells, and Williams.

(As amended Oct. 2, 1978, Pub. L. 95-408, § 3(b), 92 Stat. 883.)

AMENDMENTS

1978—Par. (2). Pub. L. 95-408, § 3(b)(1), deleted Sheridan and Wells from the counties comprising the Southeastern Division.

Par. (3). Pub. L. 95-408, § 3(b)(2), deleted Bottineau, McHenry and Pierce from the counties comprising the Northeastern Division.

Par. (4). Pub. L. 95-408, § 3(b)(3), added Bottineau, McHenry, Pierce, Sheridan and Wells to those counties comprising the Northwestern Division.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95-408 effective 180 days after Oct. 2, 1978, such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95-408, set out as an Effective Date of 1978 Amendment note under section 89 of this title.

§ 118. Pennsylvania

Pennsylvania is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of Pennsylvania.

[*See main edition for text of* (a) *and* (b)]

Western District

(c) The Western District comprises the counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.

Court for the Western District shall be held at Erie, Johnstown, and Pittsburgh.

(As amended Nov. 2, 1978, Pub. L. 95-573, § 4, 92 Stat. 2458.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-573 provided for the holding of a term of court at Johnstown in the Western District of Pennsylvania.

§ 132. Creation and composition of district courts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1827 of this title.

§ 133. Appointment and number of district judges

The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows:

Districts	*Judges*
Alabama:	
Northern	7
Middle	3
Southern	2
Alaska	2
Arizona	8
Arkansas:	
Eastern	3
Western	1
Eastern and Western	2
California:	
Northern	12
Eastern	6
Central	17
Southern	7
Colorado	6
Connecticut	5
Delaware	3
District of Columbia	15
Florida:	
Northern	3
Middle	9
Southern	12
Georgia:	
Northern	11
Middle	2
Southern	3
Hawaii	2
Idaho	2
Illinois:	
Northern	16
Central	3
Southern	2
Indiana:	
Northern	4
Southern	5
Iowa:	
Northern	1
Southern	2
Northern and Southern	1
Kansas	5
Kentucky:	
Eastern	4
Western	3
Eastern and Western	1
Louisiana:	
Eastern	13
Middle	2
Western	5
Maine	2
Maryland	9
Massachusetts	10
Michigan:	
Eastern	13
Western	4
Minnesota	5
Mississippi:	
Northern	2
Southern	3
Missouri:	
Eastern	4
Western	5
Eastern and Western	2
Montana	2
Nebraska	3
Nevada	3
New Hampshire	2
New Jersey	11
New Mexico	4
New York:	
Northern	3
Southern	27
Eastern	10
Western	3
North Carolina:	
Eastern	3
Western	3
Middle	3
North Dakota	2
Ohio:	
Northern	9
Southern	6
Oklahoma:	
Northern	2
Eastern	1
Western	3
Northern, Eastern, and Western	2
Oregon	5
Pennsylvania:	
Eastern	19
Middle	5
Western	10
Puerto Rico	7
Rhode Island	2
South Carolina	8
South Dakota	3
Tennessee:	
Eastern	3
Middle	3
Western	3
Texas:	
Northern	9
Southern	13
Eastern	4
Western	6
Utah	3
Vermont	2
Virginia:	
Eastern	8
Western	4
Washington:	
Eastern	2
Western	5
West Virginia:	
Northern	1
Southern	3
Northern and Southern	1
Wisconsin:	
Eastern	4
Western	2
Wyoming	1

(As amended Oct. 2, 1978, Pub. L. 95-408, § 4(b)(2), 92 Stat. 885; Oct. 20, 1978, Pub. L. 95-486, § 1(c), 92 Stat. 1630.)

CODIFICATION

Paragraph (2) of subsection (b) of section 4 of Pub. L. 95-408, cited to the credit of this section, was amended generally by Pub. L. 96-4, § 1, Mar. 30, 1979, 93 Stat. 6, and enacted provisions which are set out as a note under section 93 of this title.

AMENDMENTS

1978—Pub. L. 95-486 altered the number of permanent district judgeships in the named districts as follows:

State	Former	New
Alabama:		
Northern	4	7
Middle	2	3
Southern	2	2
Alaska	2	2
Arizona	5	8
Arkansas:		
Eastern	1	3
Western	1	1
Eastern and Western	2	2
California:		
Northern	11	12
Eastern	3	6
Central	16	17
Southern	5	7
Colorado	4	6
Connecticut	4	5
Delaware	3	3
District of Columbia	15	15
Florida:		
Northern	2	3
Middle	6	9
Southern	7	12
Georgia:		
Northern	6	11
Middle	2	2
Southern	2	3
Hawaii	2	2
Idaho	2	2
Illinois:		
Northern	13	16
Central	2	3
Southern	2	2
Indiana:		
Northern	3	4
Southern	4	5
Iowa:		
Northern	1	1
Southern	1	2
Northern and Southern	1	1
Kansas	4	5
Kentucky:		
Eastern	2	4
Western	3	3
Eastern and Western	1	1
Louisiana:		
Eastern	9	13
Middle	1	2
Western	4	5
Maine	1	2
Maryland	7	9
Massachusetts	6	10
Michigan:		
Eastern	10	13
Western	2	4
Minnesota	4	5
Mississippi:		
Northern	2	2
Southern	3	3
Missouri:		
Eastern	3	4
Western	3	5
Eastern and Western	2	2
Montana	2	2
Nebraska	3	3
Nevada	2	3
New Hampshire	1	2
New Jersey	9	11
New Mexico	3	4
New York:		
Northern	2	3
Southern	27	27
Eastern	9	10
Western	3	3
North Carolina:		
Eastern	2	3
Western	2	3
Middle	2	3
North Dakota	2	2
Ohio:		
Northern	8	9
Southern	5	6
Oklahoma:		
Northern	1	2
Eastern	1	1
Western	2	3
Northern, Eastern, and Western	2	2
Oregon	3	5
Pennsylvania:		
Eastern	19	19
Middle	3	5
Western	10	10
Puerto Rico	3	7
Rhode Island	2	2
South Carolina	5	8
South Dakota	2	3
Tennessee:		
Eastern	3	3
Middle	2	3
Western	3	3
Texas:		
Northern	6	9
Southern	8	13
Eastern	3	4
Western	5	6
Utah	2	3
Vermont	2	2
Virginia:		
Eastern	6	8
Western	2	4
Washington:		
Eastern	1	2
Western	3	5
West Virginia:		
Northern	1	1
Southern	2	3
Northern and Southern	1	1
Wisconsin:		
Eastern	3	4
Western	1	2
Wyoming	1	1

Pub. L. 95–408 substituted "Central" for "Southern" and "Southern" for "Eastern" in item relating to Illinois.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95–408 effective 180 days after Oct. 2, 1978, such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–408, set out as an Effective Date of 1978 Amendment note under section 89 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; WAIVER OF STANDARDS AND GUIDELINES; FAILURE TO COMPLY

Section 7 of Pub. L. 95–486 provided that:

"(a) The first section and section 2 of this Act [amending this section and enacting provisions set out as notes under this section] shall take effect immediately upon the President's promulgation and publication of standards and guidelines for the selection, on the basis of merit, of nominees for United States district court judgeships authorized by this Act [amending sections 44, 46, 133, 1337, and 1445 of this title and section 5108 of Title 5, Government Organization and Employees, enacting provisions set out as notes under sections 41, 44, and 133 of this title, and amending a provision set out as a note under section 45 of this title].

"(b) The President may waive such standards and guidelines with respect to any nomination by notifying the Senate of the reasons for such waiver.

"(c) Following the promulgation and publication of such standards and guidelines, no nomination or ap-

pointment to a United States district court judgeship may be invalidated on the basis of the President's failure to comply with this section or with any standards or guidelines promulgated under this section.

"(d) This Act, other than the first section and section 2 [amending this section and enacting provisions set out as notes under this section] shall take effect on the date of enactment of this Act [Oct. 20, 1978]."

Section 11 of Pub. L. 95-486 provided that: "Notwithstanding any other provision of this Act the first section and section 2 [amending this section and enacting provisions set out as notes under this section] shall not take effect before November 1, 1978."

ADDITIONAL JUDGESHIPS

Section 1(a) of Pub. L. 95-486 provided that: "The President shall appoint, by and with the advice and consent of the Senate, three additional district judges for the northern district of Alabama, one additional district judge for the middle district of Alabama, three additional district judges for the district of Arizona, two additional district judges for the eastern district of Arkansas, one additional district judge for the northern district of California, three additional district judges for the eastern district of California, one additional district judge for the central district of California, two additional district judges for the southern district of California, two additional district judges for the district of Colorado, one additional district judge for the district of Connecticut, one additional district judge for the northern district of Florida, three additional district judges for the middle district of Florida, five additional district judges for the southern district of Florida, five additional district judges for the northern district of Georgia, one additional district judge for the southern district of Georgia, three additional district judges for the northern district of Illinois, one additional district judge for the central district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the southern district of Indiana, one additional district judge for the southern district of Iowa, one additional district judge for the district of Kansas, two additional district judges for the eastern district of Kentucky, four additional district judges for the eastern district of Louisiana, one additional district judge for the middle district of Louisiana, one additional district judge for the western district of Louisiana, one additional district judge for the district of Maine, two additional district judges for the district of Maryland, four additional district judges for the district of Massachusetts, three additional district judges for the eastern district of Michigan, two additional district judges for the western district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the eastern district of Missouri, two additional district judges for the western district of Missouri, one additional district judge for the district of Nevada, one additional district judge for the district of New Hampshire, two additional district judges for the district of New Jersey, one additional district judge for the district of New Mexico, one additional district judge for the northern district of New York, one additional district judge for the eastern district of New York, one additional district judge for the eastern district of North Carolina, one additional district judge for the middle district of North Carolina, one additional district judge for the western district of North Carolina, one additional district judge for the northern district of Ohio, one additional district judge for the southern district of Ohio, one additional district judge for the western district of Oklahoma, one additional district judge for the northern district of Oklahoma, two additional district judges for the district of Oregon, two additional district judges for the middle district of Pennsylvania, four additional district judges for the district of Puerto Rico, three additional district judges for the district of South Carolina, one additional district judge for the district of South Dakota, one additional district judge for the middle district of Tennessee, three additional district judges for the northern district of Texas, one additional district judge for the eastern district of Texas, five additional district judges for the southern district of Texas, one additional district judge for the western district of Texas, one additional district judge for the district of Utah, two additional district judges for the eastern district of Virginia, two additional district judges for the western district of Virginia, one additional district judge for the eastern district of Washington, one additional district judge for the western district of Washington, one additional district judge for the southern district of West Virginia, one additional district judge for the eastern district of Wisconsin, and one additional district judge for the western district of Wisconsin."

KENTUCKY, MINNESOTA, OHIO, AND WEST VIRGINIA

Section 2 of Pub. L. 95-486 provided that: "The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the eastern district of Kentucky, one additional district judge for the district of Minnesota, one additional district judge for the northern district of Ohio, and one additional district judge for the southern district of West Virginia. The first vacancy in the office of district judge in the judicial districts named in this section occurring five years or more after the effective date of this Act [Oct. 20, 1978] shall not be filled."

WASHINGTON

Section 1(b) of Pub. L. 95-486 provided that: "The existing district judgeship for the eastern and western districts of Washington, heretofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the western district of Washington only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act."

NOMINATION OF WOMEN AND BLACKS TO FEDERAL JUDGESHIPS

Section 8 of Pub. L. 95-486 provided that:

"The Congress—

"(1) takes notice of the fact that only 1 percent of Federal judges are women and only 4 percent are blacks; and

"(2) suggests that the President, in selecting individuals for nomination to the Federal judgeships created by this Act [for classification see Effective Date of 1978 Amendment note above], give due consideration to qualified individuals regardless of race, color, sex, religion, or national origin."

EX. ORD. NO. 12084. JUDICIAL NOMINATING COMMISSION FOR THE DISTRICT OF PUERTO RICO

Ex. Ord. No. 12084, Sept. 27, 1978, 43 F.R. 44815, as amended by Ex. Ord. No. 12097, Nov. 8, 1978, 43 F.R. 52455, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to create in accord with the Federal Advisory Committee Act (5 U.S.C. App.) an advisory committee on judicial nominations for the District of Puerto Rico, it is hereby ordered as follows:

1-1. ESTABLISHMENT OF THE COMMISSION

1-101. There is established the Judicial Nominating Commission for the District of Puerto Rico.

1-102. The Commission shall have seven members appointed by the President. The President shall designate a Chairman from among the members.

1-2. FUNCTIONS OF THE COMMISSION

1-201. The Commission shall begin functioning when the President or his designee notifies the Chairman that the President desires the Commission's assistance in identifying persons qualified to fill a vacancy on the United States District Court for the District of Puerto Rico.

1-202. Upon receiving such notification, the Commission shall:

(a) give public notice of the vacancy, inviting suggestions as to potential nominees;

(b) conduct inquiries to identify potential nominees;

(c) conduct inquiries to identify, among the potential nominees, persons who are well qualified to serve as a United States District Judge; and

(d) report to the Attorney General, within the time specified in the notification, the results of its activities, including a list of persons whom the Commission considers to be best qualified to fill the vacancy.

1-203. In evaluating potential nominees, the Commission shall use the standards prescribed in Executive Order 12097 [set out as a note below].

1-3. Administrative Provisions

1-301. Members of the Commission shall serve without compensation. While engaged in the work of the Commission, members may receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

1-302. The Attorney General shall furnish to the Commission necessary administrative support.

1-303. All necessary expenses incurred in connection with the work of the Commission, to the extent permitted by law, shall be paid from funds available to the Attorney General.

1-4. General Provisions

1-401. A person who is a member of the Commission shall not, during the period of membership and for one year after that period, be considered by the Commission as a potential nominee.

1-402. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Attorney General in accordance with the guidelines and procedures established by the Administrator of General Services.

1-403. The Commission shall terminate on December 31, 1978, unless sooner extended by the President.

Jimmy Carter.

Extension of Term of Judicial Nominating Commission for the District of Puerto Rico

Term of the Judicial Nominating Commission for the District of Puerto Rico, extended until Dec. 31, 1980, see Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of Appendix to Title 5, Government Organization and Employees.

Ex. Ord. No. 12097. Standards and Guidelines for Merit Selection of District Judges

Ex. Ord. No. 12097, Nov. 8, 1978, 43 F.R. 52455, provided:

By virtue of the authority vested in me as President by the Constitution and the statutes of the United States of America, including Section 7(a) of the Omnibus Judgeship Act of 1978 [set out above as an Effective Date of 1978 Amendment note], providing that the President shall promulgate and publish standards and guidelines for the selection of nominees for United States district court judgeships, it is hereby ordered as follows:

1-1. Nomination of District Judges

1-101. Whenever a vacancy occurs in a district court of the United States, the President shall nominate as district judge to fill that vacancy a person whose character, experience, ability, and commitment to equal justice under law qualifies that person to serve in the federal judiciary.

1-102. The Attorney General shall assist the President by recommending to the President persons to be considered for appointment who are qualified to be district judges and by evaluating potential nominees. The Attorney General shall receive recommendations of such persons from any person, commission or organization.

1-103. The use of commissions to notify the public of vacancies and to make recommendations for district judge is encouraged. The Attorney General shall make public the suggested guidelines for such commissions.

1-104. Before making recommendations, the Attorney General shall consider whether:

(a) Public notice of the vacancy has been given and an affirmative effort has been made, in the case of each vacancy, to identify qualified candidates, including women and members of minority groups;

(b) The selection process was fair and reasonable;

(c) The person or persons recommended meet the standards for evaluation set forth in Section 1-2 of this Order.

1-105. In evaluating proposed nominees, consideration will be given to reports of Department of Justice investigations and all other relevant information concerning potential nominees and their qualifications.

1-2. Standards for Evaluating Proposed Nominees

1-201. The standards to be used in determining whether a person is qualified to serve as a district judge are whether that person:

(a) Is a citizen of the United States, is a member of a bar of a state, territory, possession or the District of Columbia, and is in good standing in every bar in which that person is a member;

(b) Possesses, and has a reputation for, integrity, good character, and common sense;

(c) Is, and has a reputation for being, fair, experienced, even-tempered and free of biases against any class of citizens or any religious or racial group;

(d) Is of sound physical and mental health;

(e) Possesses and has demonstrated commitment to equal justice under law;

(f) Possesses and has demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and their processes;

(g) Has the ability and the willingness to manage complicated pretrial and trial proceedings, including the ability to weigh conflicting testimony and make factual determinations, and to communicate skillfully with jurors and witnesses.

1-3. Amendments of Existing Orders

1-301. Section 3(b) of Executive Order 12059 [set out as a note under section 44 of this title], of May 11, 1978 is amended to read as follows:

"(b) The Panel for the District of Columbia Circuit shall have the additional function of recommending nominees for the United States District Court for the District of Columbia. In exercising this function, the panel shall use the standards set forth in Executive Order 12097 and shall forward its recommendations to the Attorney General.".

1-302. Executive Order 12084 [set out as a note above], of September 27, 1978 is amended in the following respects:

(1) Section 1-202(d) is amended to read as follows:

"(d) report to the Attorney General, within the time specified in the notification, the results of its activities, including a list of persons whom the Commission considers to be best qualified to fill the vacancy.".

(2) Section 1-203 is amended to read as follows:

"1-203. In evaluating potential nominees, the Commission shall use the standards prescribed in Executive Order 12097.".

Jimmy Carter.

§ 135. Salaries of district judges

References in Text

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90-206, Dec.

16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

SALARY RATE LIMITATIONS FOR USE OF FUNDS FOR FISCAL YEAR 1980

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95-391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96-86, set out as a note under section 5318 of Title 5, Government Organization and Employees.

INCREASE OF SALARIES

Salaries of district judges increased to $57,500 effective on the first day of the first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95-391, title III, § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $54,500.

§ 136. Chief judges; precedence of district judges

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-593 effective at the expiration of one year from Aug. 6, 1958, see section 3 of Pub. L. 85-593, as amended, set out as an Effective Date of 1958 Amendment note under section 45 of this title.

§ 142. Accommodations at places for holding court

Court shall be held only at places where Federal quarters and accommodations are available, or suitable quarters and accommodations are furnished without cost to the United States. The foregoing restrictions shall not, however, preclude the Administrator of General Services, at the request of the Director of the Administrative Office of the United States Courts, from providing such court quarters and accommodations as the Administrator determines can appropriately be made available at places where regular terms of court are authorized by law to be held, but only if such court quarters and accommodations have been approved as necessary by the judicial council of the appropriate circuit. The limitations and restrictions contained in this section shall not be applicable to the furnishing of accommodations to judges of the courts of appeals at places where Federal facilities are available and the judicial council of the circuit approves.

(As amended Nov. 19, 1977, Pub. L. 95-196, 91 Stat. 1420.)

AMENDMENTS

1977—Pub. L. 95-196 added provision that the limitations and restrictions contained in this section not be applicable to the furnishing of accommodations to judges of the courts of appeals at places where Federal facilities are available and the judicial council of the circuit approves.

CHAPTER 6—BANKRUPTCY COURTS

Sec.
151. Creation and composition of bankruptcy courts.
152. Appointment of bankruptcy judges.
153. Tenure and residence of bankruptcy judges.
154. Salaries of bankruptcy judges.
155. Chief judge; precedence of bankruptcy judges.
156. Division of business among bankruptcy judges.
157. Times of holding court.
158. Accommodations at places for holding court.
159. Vacant judgeship as affecting proceedings.
160. Appellate panels.

COURTS DURING TRANSITION

Pub. L. 95-598, title IV, § 404, Nov. 6, 1978, 92 Stat. 2683, provided that:

"(a) The courts of bankruptcy, as defined under section 1(10) of the Bankruptcy Act [section 1(10) of former Title 11, Bankruptcy], created under section 2a of the Bankruptcy Act [section 11(a) of former Title 11], and existing on September 30, 1979, shall continue through March 31, 1984, to be the courts of bankruptcy for the purposes of this Act and the amendments made by this Act [see Tables for complete classification of Pub. L. 95-598]. Each of the courts of bankruptcy so continued shall constitute a separate department of the district court that is such court of bankruptcy under the Bankruptcy Act.

"(b) The term of a referee in bankruptcy who is serving on the date of enactment of this Act [Nov. 6, 1978] is extended to and expires on March 31, 1984 or when his successor takes office. During the period commencing on October 1, 1979, and ending on March 31, 1984 (hereinafter in this title referred to as 'the transition period'), unless such referee is found to be not qualified by the Chief Judge of the Circuit Court after consultation with a merit screening committee established as provided in subsection (c) of this section, such a referee in bankruptcy upon the expiration of his appointed term as referee shall have the title of United States bankruptcy judge, and shall serve in the court of bankruptcy continued under subsection (a) of this section that appointed such United States bankruptcy judge, in the manner prescribed by this title. Section 8335(a) of title 5 of the United States Code shall not apply in respect of United States bankruptcy judges during the transition period.

"(c) There shall be established for each State a merit screening committee composed of the president or the designee of the president of the State bar association, the dean or the designee of the dean of a law school located within the State, and the president or designee of the president of a local bar association for the area wherein a referee in bankruptcy maintains his official headquarters within the State. Each such merit screening committee shall be organized and summoned to meetings by the circuit executive for the circuit embracing the State, who shall serve as secretary of each such screening committee established within the circuit. Before the expiration of the term of a referee in bankruptcy in office on the date of enactment of this Act [Nov. 6, 1978], or if his successor has not been appointed before the date of enactment of this Act, a merit screening committee shall be organized by the circuit executive to pass on the qualifications of such referee for the purpose of determining whether the term of such referee shall be extended as provided under subsection (b) of this section.

"(d) Except as otherwise provided in this section or in section 407 of this Act [section 407 of Pub. L. 95-598, set out as a note below], matters relating to the office of United States bankruptcy judges and to United States bankruptcy judges shall continue to be governed during the transition period by the rules set forth in sections 34, 35, 36, 40a, 40b, 40d, 41, and 43 of the Bankruptcy Act [sections 62, 63, 64, 68(a), (b), and (d), 69, and 71 of former Title 11, Bankruptcy] as such Act existed on September 30, 1979. A court of bankruptcy may not appoint an individual under such section 34 [section 62 of former Title 11] if the merit screening committee established under subsection (c) of this section for the district of such court finds such individual to be not qualified.

"(e) During the transition period, the United States bankruptcy judges of each district may appoint a clerk, necessary other employees, including law clerks and secretaries, and court reporters the same as the judges of a United States bankruptcy court established under section 201 of this Act [enacting this chapter] may appoint such officers and employees under the amendment made by section 233 of this Act [enacting section 771 et seq. of this title]. Such clerk, other employees, and reporters shall have the same rights and powers, shall perform the same functions and duties and shall be subject to the same provisions of title 28 of the United States Code, as a clerk, other employee, or reporter, as the case may be, appointed under the amendment made by section 233 of this Act by a United States bankruptcy court established under section 201 of this Act. The United States bankruptcy judges of each district shall have the same rights and powers as a United States bankruptcy court established under section 201 of this Act with respect to such clerk, other employees, and reporters.

"(f) During the transition period, the provisions of sections 455, 456, 569(a), 571(b), 620(b)(3), and 957(a) of title 28 of the United States Code shall apply to United States bankruptcy judges and to any court officers or employees appointed or employed under subsection (e) of this section the same as such sections apply to the bankruptcy judges, and to any court officers or employees, of a United States bankruptcy court established under section 201 of this Act [enacting this chapter]. During the transition period, the position of United States bankruptcy judge shall be deemed to be a position within the purview of subparagraph (C) of section 225(f) of the Federal Salary Act of 1967 (2 U.S.C. 356(C)).

"(g) During the transition period, the Judicial Conference of the United States may from time to time in the light of the recommendations of the judicial councils of each circuit, made after advising with the district judges and the United States bankruptcy judges of the respective circuit, and of the Director of the Administrative Office of the United States Courts, increase the number of full-time United States bankruptcy judges, or provide that a part-time United States bankruptcy judge for a particular district may serve in the capacity and receive the salary of a full-time United States bankruptcy judge, as the expeditious transaction of the business of the several courts of bankruptcy may require."

TRANSITION STUDY

Pub. L. 95-598, title IV, § 406, Nov. 6, 1978, 92 Stat. 2686, provided that:

"(a)(1) During the transition period, the Director of the Administrative Office of the United States Courts shall make continuing studies and surveys of conditions in the judicial districts to determine—

"(A) the number of bankruptcy judges of the United States bankruptcy courts established under section 201 of this Act [enacting this chapter] that will be needed after March 31, 1984, to provide for the expeditious and effective administration of justice; and

"(B) the regular places of offices and the places at which courts shall be held.

"(2) In the course of any survey, the Director shall take into account local conditions in each judicial district, including the areas and the population to be served, the transportation and communications facilities available, the average number and types of bankruptcy cases filed and closed during the transition period, the number of cases pending and judicial matters heard, and any other material factors. The Director shall give consideration to suggestions from any interested parties.

"(b) Upon completion of the studies and surveys required by subsection (a) of this section, the Director shall report to the judicial councils of the circuits and the Judicial Conference of the United States his recommendations concerning the number of bankruptcy judges, their principal places of offices, and the places where court shall be held. The judicial councils shall advise the Conference, stating their recommendations and the reasons therefor. The Conference shall recommend to the Congress and to the President, before January 3, 1983, in light of the recommendations of the Director and the judicial councils, the number of bankruptcy judges of the United States bankruptcy courts established under section 201 of this Act [enacting this chapter] that will be needed after March 31, 1984, and the locations at which they shall serve."

JUDICIAL ADMINISTRATION DURING TRANSITION

Pub. L. 95-598, title IV, § 407, Nov. 6, 1978, 92 Stat. 2686 provided that:

"(a) The Director of the Administrative Office of the United States Courts shall appoint a committee of not fewer than seven United States bankruptcy judges to advise the Director with respect to matters that arise during the transition period or that are relevant to the purposes of the transition period.

"(b) During the transition period, the Congress strongly recommends at least one-third of the members of any committee of the Judicial Conference of the United States that is concerned with the administration of the bankruptcy system shall be chosen from among the United States bankruptcy judges, and at least one member of any committee of the Judicial Conference that is concerned with court administration, supporting personnel, or bankruptcy court rules shall be chosen from among the United States bankruptcy judges.

"(c) During the transition period, the chief judge of each circuit shall summon at least one bankruptcy judge from each judicial district within the circuit to the judicial conference of such circuit called and held under section 332 of title 28 of the United States Code."

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1869 of this title; title 5 section 8331; title 18 section 6001.

§ 151. Creation and composition of bankruptcy courts

(a) There shall be in each judicial district, as an adjunct to the district court for such district, a bankruptcy court which shall be a court of record known as the United States Bankruptcy Court for the district.

(b) Each bankruptcy court shall consist of the bankruptcy judge or judges for the district in regular active service. Justices or judges designated and assigned shall be competent to sit as judges of the bankruptcy court.

(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a bankruptcy court with respect to any action, suit or proceeding may be exercised by a single bankruptcy judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other bankruptcy judges.

(Added Pub. L. 95-598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2657.)

EFFECTIVE DATE

Chapter effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 152. Appointment of bankruptcy judges

The President shall appoint, by and with the advice and consent of the Senate, bankruptcy judges for the several judicial districts. In each

instance, the President shall give due consideration to the recommended nominee or nominees of the Judicial Council of the Circuit within which an appointment is to be made.

(Added Pub. L. 95–598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2657.)

§ 153. Tenure and residence of bankruptcy judges

(a) Each bankruptcy judge shall hold office for a term of 14 years, but may continue to perform the duties of his office until his successor takes office, unless such office has been eliminated.

(b) Removal of a bankruptcy judge during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability. Removal shall be by the judicial council of the circuit or circuits in which the bankruptcy judge serves, but removal may not occur unless a majority of all the judges of such circuit council or councils concur in the order of removal. Before any order of removal may be entered, a full specification of the charges shall be furnished to the bankruptcy judge, and he shall be accorded an opportunity to be heard on the charges. Any cause for removal of any bankruptcy judge coming to the knowledge of the Director of the Administrative Office of the United States Courts shall be reported by him to the chief judge of the circuit or circuits in which he serves, and a copy of the report shall at the same time be transmitted to the circuit council or councils and to the bankruptcy judge.

(c) Each bankruptcy judge shall reside in the district or one of the districts for which he is appointed, or within 20 miles of his official station.

(d) If the public interest and the nature of the business of a bankruptcy court require that a bankruptcy judge should maintain his abode at or near a particular part of the district the judicial council of the circuit may so declare and may make an appropriate order. If the bankruptcy judges of such a district are unable to agree as to which of them shall maintain his abode at or near the place or within the area specified in such an order the judicial council of the circuit may decide which of them shall do so.

(Added Pub. L. 95–598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2657.)

§ 154. Salaries of bankruptcy judges

Each judge of a bankruptcy court shall receive a salary at an annual rate of $50,000, subject to adjustment under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), and section 461 of this title.

(Added Pub. L. 95–598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2658.)

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90–206, title II, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

§ 155. Chief judge; precedence of bankruptcy judges

(a) In each district having more than one judge the bankruptcy judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the bankruptcy court. If all the bankruptcy judges in regular active service are 70 years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under 70 years of age, but a judge may not act as chief judge until he has served as a bankruptcy judge for one year.

(b) The chief judge shall have precedence and preside at any session which he attends.

Other bankruptcy judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) A judge whose commission extends over more than one district shall be junior to all bankruptcy judges except in the district in which he resided at the time he entered upon the duties of his office.

(d) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as a bankruptcy judge, he may so certify to the chief judge of the court of appeals for the circuit in which the bankruptcy judge serves, and thereafter the bankruptcy judge in active service next in precedence and willing to serve shall be designated by the chief judge of the court of appeals as the chief judge of the bankruptcy court.

(e) If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the bankruptcy judge in active service, present in the district and able and qualified to act, who is next in precedence.

(f) Service as a referee in bankruptcy or as a bankruptcy judge under the Bankruptcy Act shall be taken into account in the determination of seniority of commission under this section.

(Added Pub. L. 95–598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2658.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (f), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy, and which was repealed effective Oct. 1, 1979 by sections 401(a) and 402(a) of Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2682.

§ 156. Division of business among bankruptcy judges

The business of a bankruptcy court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.

The chief judge of the bankruptcy court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

If the bankruptcy judges in any district are unable to agree upon the adoption of rules or orders for that purpose the judicial council of the circuit shall make the necessary orders.

(Added Pub. L. 95–598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2659.)

§ 157. Times of holding court

(a) The bankruptcy court at each designated location shall be deemed to be in continuous session on all business days throughout the year.

(b) Each bankruptcy court may establish by local rule or order schedules of court sessions at designated places of holding court other than the headquarters office of the court. Such schedules may be pretermitted by order of the court.

(c) Bankruptcy court may be held at any place within the territory served, in any case, on order of the bankruptcy court, for the convenience of the parties, on such notice as the bankruptcy court orders.

(Added Pub. L. 95-598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2659.)

§ 158. Accommodations at places for holding court

Court shall be held only at places where Federal quarters and accommodations are available, or suitable quarters and accommodations are furnished without cost to the United States. The foregoing restrictions shall not, however, preclude the Administrator of General Services, at the request of the Director of the Administrative Office of the United States Courts, from providing such court quarters and accommodations as the Administrator determines can appropriately be made available at places where court is authorized by law to be held, but only if such court quarters and accommodations have been approved as necessary by the judicial council of the appropriate circuit.

(Added Pub. L. 95-598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2659.)

§ 159. Vacant judgeship as affecting proceedings

When the office of a bankruptcy judge becomes vacant, all pending process, pleadings and proceedings shall, when necessary, be continued by the clerk until a judge is appointed or designated to hold such court.

(Added Pub. L. 95-598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2659.)

§ 160. Appellate panels

(a) If the circuit council of a circuit orders application of this section to a district within such circuit, the chief judge of each circuit shall designate panels of three bankruptcy judges to hear appeals from judgments, orders, and decrees of the bankruptcy court of the United States for such district. Except as provided in section 293(e) of this title, a panel shall be composed only of bankruptcy judges for districts located in the circuit in which the appeal arises. The chief judge shall designate a sufficient number of such panels so that appeals may be heard and disposed of expeditiously.

(b) A panel designated under subsection (a) of this section may not hear an appeal from a judgment, order, or decree entered by a member of the panel.

(c) When hearing an appeal, a panel designated under subsection (a) of this section shall sit at a place convenient to the parties to the appeal.

(Added Pub. L. 95-598, title II, § 201(a), Nov. 6, 1978, 92 Stat. 2659.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1293, 1294, 1334, 1482 of this title.

CHAPTER 7—COURT OF CLAIMS

§ 173. Tenure and salaries of judges

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

SALARY RATE LIMITATIONS FOR USE OF FUNDS FOR FISCAL YEAR 1980

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95-391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96-86, set out as a note under section 5318 of Title 5, Government Organization and Employees.

INCREASE OF SALARIES

Salaries of judges increased to $60,700 effective on the first day of the first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95-391, title III, § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $57,500.

CHAPTER 9—COURT OF CUSTOMS AND PATENT APPEALS

§ 213. Tenure and salaries of judges

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

SALARY RATE LIMITATIONS FOR USE OF FUNDS FOR FISCAL YEAR 1980

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95-391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96-86, set out as a note under section 5318 of Title 5, Government Organization and Employees.

INCREASE OF SALARIES

Salaries of judges increased to $60,700 effective on the first day of the first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95-391, title III, § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $57,500.

CHAPTER 11—CUSTOMS COURT

§ 252. Tenure and salaries of judges

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

SALARY RATE LIMITATIONS FOR USE OF FUNDS FOR FISCAL YEAR 1980

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95-391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96-86, set out as a note under section 5318 of Title 5, Government Organization and Employees.

INCREASE OF SALARIES

Salaries of judges increased to $57,500 effective on the first day of the first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95-391, title III, § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $54,500.

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

§ 291. Circuit judges

[*See main edition for text of* (a) *and* (b)]

(c) The chief judge of a circuit or the circuit justice may, in the public interest, designate and assign temporarily any circuit judge within the circuit, including a judge designated and assigned to temporary duty therein, to hold a district or bankruptcy court in any district within the circuit.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 202, 92 Stat 2660.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-598 substituted "to hold a district or bankruptcy court" for "to hold a district court".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 292. District judges

[*See main edition for text of* (a)]

(b) The chief judge of a circuit may, in the public interest, designate and assign temporarily any district judge of the circuit to hold a district court or a bankruptcy court in any district within the circuit.

[*See main edition for text of* (c)]

(d) The Chief Justice of the United States may designate and assign temporarily a district judge of one circuit for service in another circuit, in a bankruptcy court, district court, or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

[*See main edition for text of* (e)]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, §§ 203, 204, 92 Stat. 2660.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-598, § 203, substituted "to hold a district court or a bankruptcy court" for "to hold a district court".

Subsec. (d). Pub. L. 95-598, § 204, substituted "in a bankruptcy court, district court, or court of appeals" for "either in a district court or court of appeals".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 293. Judges of other courts

[*See main edition for text of* (a) *to* (d)]

(e)(1) The Chief Justice of the United States may designate and assign temporarily a bankruptcy judge of one circuit for service in a bankruptcy court in another circuit upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

(2) The chief judge of a circuit may, in the public interest, designate and assign temporarily a bankruptcy judge of the circuit to hold a bankruptcy court in any district within the circuit.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 205, 92 Stat. 2660.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-598 added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 160 of this title.

§ 294. Assignment of retired Justices or judges to active duty

[*See main edition for text of* (a) *and* (b)]

(c) Any retired circuit district or bankruptcy judge judge[1] may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

(d) The Chief Justice of the United States shall maintain a roster of retired judges of the

[1] So in original. Probably should read "circuit, district, or bankruptcy judge".

United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit, district judge or bankruptcy judge,[1] or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster or senior judges. Any such retired judge of the United States may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit, district judge or bankruptcy judge,[1] or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

[*See main edition for text of (e)*]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 206, 92 Stat. 2660.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-598, § 206(1), added reference to retired bankruptcy judges.

Subsec. (d). Pub. L. 95-598, § 206(2), added reference to retired bankruptcy judges.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 295. Conditions upon designation and assignment

No designation and assignment of a circuit[2] district, or bankruptcy judge in active service shall be made without the consent of the chief judge or judicial council of the circuit from which the judge is to be designated and assigned. No designation and assignment of a judge of any other court of the United States in active service shall be made without the consent of the chief judge of such court.

[*See main edition for text of 2d and 3d unnumbered pars.*]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 207, 92 Stat. 2660.)

AMENDMENTS

1978—Pub. L. 95-598 added reference to bankruptcy judges.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

[1] So in original. Probably should read "circuit, district, or bankruptcy judge,".

[2] So in original. Probably should be followed by a comma.

CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

§ 331. Judicial Conference of the United States

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals, a district judge from each judicial circuit, and two bankruptcy judges to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the circuit and district judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the circuit and district judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the circuit and district judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years. The bankruptcy judges to be summoned shall be chosen at large by all the bankruptcy judges. Each bankruptcy judge chosen shall serve as a member of the conference for three successive years, except that in the year following the effective date of this sentence the bankruptcy judges shall choose one bankruptcy judge to serve for two years.

If the chief judge of any circuit or the district judge chosen by the judges of the circuit or a bankruptcy judge chosen by the bankruptcy judges is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit or any other bankruptcy judge. If the chief judge of the Court of Claims, or the chief judge of the Court of Customs and Patent Appeals is unable to attend, the Chief Justice may summon an associate judge of such court. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

[*See main edition for text of 4th to 7th unnumbered pars.*]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 208, 92 Stat. 2660.)

AMENDMENTS

1978—Pub. L. 95-598 added provisions relating to bankruptcy judges.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Ef-

fective Date note preceding section 101 of Title 11, Bankruptcy.

§ 332. Judicial councils

[See main edition for text of (a) to (c)]

(d) Each judicial council shall make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit. The district judges and bankruptcy judges shall promptly carry into effect all orders of the judicial council.

[See main edition for text of (e) and (f)]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 209, 92 Stat. 2661.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-598 added reference to bankruptcy judges.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 333. Judicial conferences of circuits

The chief judge of each circuit shall summon annually the circuit, district, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates, for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit. He shall preside at such conference, which shall be known as the Judicial Conference of the circuit. The judges of the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands shall also be summoned annually to the conferences of their respective circuits.

[See main edition for text of 2d and 3d unnumbered pars.]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 210, 92 Stat. 2661.)

AMENDMENTS

1978—Pub. L. 95-598 added reference to bankruptcy judges.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

§ 376. Annuities for survivors of certain judicial officials of the United States

(a) For the purposes of this section—

[See main edition for text of (1)]

(2) "retirement salary" means:

(A) in the case of a Justice or judge of the United States, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title, or (iii) in the case of a bankruptcy judge, after retirement under section 337 of this title;

[See main edition for text of (B) to (E), (3) to (5); (b) to (r)]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 211, 92 Stat. 2661.)

REFERENCES IN TEXT

Section 337 of this title, referred to in subsec. (a)(2)(A)(iii), has not been enacted as a section of this title.

AMENDMENTS

1978—Subsec. (a)(2)(A). Pub. L. 95-598 added cl. (iii) relating to bankruptcy judges.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CROSS REFERENCES

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

Sec.
455. Disqualification of justice, judge, or magistrate.
460. Application to Canal Zone, Guam and Virgin Islands.

AMENDMENTS

1978—Pub. L. 95-598, title II, §§ 214(c), 217(b), Nov. 6, 1978, 92 Stat. 2661, struck out "Alaska," after "Application to" in item 460 and struck out reference to referees in bankruptcy in item 455.

§ 451. Definitions

As used in this title:

The term "court of the United States" includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of Claims, the Court of Customs and Patent Appeals, the Customs Court and any court created by Act of Congress the judges of which are entitled to hold office during good behavior, and bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years.

The terms "district court" and "district court of the United States" mean the courts constituted by chapter 5 of this title.

The term "judge of the United States" includes judges of the courts of appeals, district courts, Court of Claims, Court of Customs and Patent Appeals, Customs Court and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior, and judge of the bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years.

[See main edition for text of 5th to 7th unnumbered pars.]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 213, 92 Stat. 2661.)

AMENDMENTS

1978—Pub. L. 95-598 expanded the definitions of "court of the United States" and "judge of the United States" by adding references to bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 376, 1821 of this title; title 2 section 130b; title 5 sections 5537, 8331; title 12 sections 1464, 1730; title 18 sections 4107, 4108.

§ 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

[*See main edition for text of (b) to (d)*]

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 214(a), (b), 92 Stat. 2661.)

AMENDMENTS

1978—Pub. L. 95-598 struck out references to referees in bankruptcy in the section catchline and in subsecs. (a) and (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 456. Traveling expenses of justices and judges

[*See main edition for text of first par.*]

The official station of the Chief Justice of the United States, the Justices of the Supreme Court and the judges of the Court of Claims, the Court of Customs and Patent Appeals, the United States Court of Appeals for the District of Columbia, the United States District Court for the District of Columbia, and the United States Bankruptcy Court for the District of Columbia, shall be the District of Columbia.

The official station of the judges of the Customs Court shall be New York City.

The official station of each circuit, district[1] and bankruptcy judge, including each district judge in the Territories and possessions, shall be that place where a district court is regularly held and at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains an actual abode in which he customarily lives.

Each circuit judge, each district judge;[1] and each bankruptcy judge whose official station is not fixed expressly in the second paragraph of this section shall upon his appointment and from time to time thereafter as his official station may change, notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and his official station.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 215, 92 Stat. 2661.)

AMENDMENTS

1978—Pub. L. 95-598 added references to the United States Bankruptcy Court for the District of Columbia and to bankruptcy judges.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 457. Records; obsolete papers

The records of bankruptcy courts, of district courts and of courts of appeals shall be kept at one or more of the places where court is held. Such places shall be designated by the respective courts except when otherwise directed by the judicial council of the circuit.

[*See main edition for text of 2d par.*]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 216, 92 Stat. 2661.)

AMENDMENTS

1978—Pub. L. 95-598 added reference to records of bankruptcy courts.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 460. Application to Canal Zone, Guam and Virgin Islands

Sections 452-459 of this chapter shall also apply to the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and the judges thereof.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 217(a), 92 Stat. 2661.)

AMENDMENTS

1978—Pub. L. 95-598 struck out "Alaska," after "Application to" in the section catchline.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

[1] So in original. Probably should be followed by a comma.

[1] So in original. The semicolon probably should be a comma.

§ 461. Adjustments in certain salaries

1977 COMPARABILITY ADJUSTMENT NOT EFFECTIVE FOR JUSTICES, JUDGES, COMMISSIONERS, AND REFEREES

Pub. L. 95-66, § 1(3), July 11, 1977, 91 Stat. 270, set out as a note under section 5318 of Title 5, Government Organization and Employees, provided that the first adjustment which, but for the enactment of Pub. L. 95-66, would have been made in the salary and rate of pay of justices, judges, commissioners, and referees under this section after July 11, 1977, would not take effect.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 44, 135, 154, 173, 213, 252, 634, 792 of this title.

PART II—DEPARTMENT OF JUSTICE

Chap.		Sec.
39.	United States Trustees	581
39.	Special Prosecutor	591

AMENDMENTS

1978—Pub. L. 95-598, title II, § 224(b), Nov. 6, 1978, 92 Stat. 2664, added chapter 39, "United States Trustees", effective Oct. 1, 1979.

Pub. L. 95-521, title VI, § 601(b), Oct. 26, 1978, 92 Stat. 1873, added chapter 39 "Special Prosecutor".

CHAPTER 31—THE ATTORNEY GENERAL

Sec.
504a. Associate Attorney General.
526. Authority of the Attorney General to investigate United States attorneys, marshals, and trustees, clerks of court, and others.[1]
528. Disqualification of officers and employees of the Department of Justice.
529. Annual report of Attorney General.

AMENDMENTS

1978—Pub. L. 95-598, title II, § 219(c), Nov. 6, 1978, 92 Stat. 2662, added reference to trustees in item 526.

Pub. L. 95-521, title VI, § 603(b), Oct. 26, 1978, 92 Stat. 1875, added items 528 and 529.

1977—Pub. L. 95-139, § 1(b), Oct. 19, 1977, 91 Stat. 1171, added item 504a.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 7192.

§ 504a. Associate Attorney General

The President may appoint, by and with the advice and consent of the Senate, an Associate Attorney General.

(Added Pub. L. 95-139, § 1(a), Oct. 19, 1977, 91 Stat. 1171.)

§ 506. Assistant Attorneys General

The President shall appoint, by and with the advice and consent of the Senate, ten Assistant Attorneys General, who shall assist the Attorney General in the performance of his duties.

(As amended Pub. L. 95-598, title II, § 218, Nov. 6, 1978, 92 Stat. 2662.)

AMENDMENTS

1978—Pub. L. 95-598 substituted "ten" for "nine".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 507. Assistant Attorney General for Administration

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 1132c-2; title 26 section 7422; title 42 section 3211.

§ 508. Vacancies

[*See main edition for text of* (a)]

(b) When by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General.

(As amended Pub. L. 95-139, § 2, Oct. 19, 1977, 91 Stat. 1171.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-139 substituted "the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General" for "the Assistant Attorneys General and the Solicitor General, in such order of succession as the Attorney General may from time to time prescribe, shall act as Attorney General".

§ 509. Functions of the Attorney General

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

(1) vested by subchapter II of chapter 5 of title 5 in administrative law judges employed by the Department of Justice;

[*See main edition for text of* (2) *to* (4)]

(As amended Pub. L. 95-251, § 2(a)(6), Mar. 27, 1978, 92 Stat. 183.)

AMENDMENTS

1978—Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners" in cl. (1).

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Attorney General, see Parts 1, 5, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2251 of Title 50, App., War and National Defense.

FEDERAL ENVIRONMENTAL OR NATURAL RESOURCE LAWS; INVESTIGATIONS RESPECTING, ETC.

Pub. L. 96-132, § 12, Nov. 30, 1979, 93 Stat. 1048, provided that: "The Attorney General may, with the concurrence of any agency or Department with primary enforcement responsibility for an environmental or natural resource law, investigate any violation, of an environmental or natural resource law of the United States, and bring such actions as are necessary to enforce such laws. This section does not affect the criminal law enforcement authority of the Attorney General."

[1] So in original. Does not conform to section catchline.

EX. ORD. NO. 12146. MANAGEMENT OF FEDERAL LEGAL RESOURCES

Ex. Ord. No. 12146, July 18, 1979, 44 F.R. 42657, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, it is hereby ordered as follows:

1-1. ESTABLISHMENT OF THE FEDERAL LEGAL COUNCIL

1-101. There is hereby established the Federal Legal Council, which shall be composed of the Attorney General and the representatives of not more than 15 other agencies. The agency representative shall be designated by the head of the agency.

1-102. The initial membership of the Council, in addition to the Attorney General, shall consist of representatives designated by the heads of the following agencies:

(a) The Department of Commerce.
(b) The Department of Defense.
(c) The Department of Energy.
(d) The Environmental Protection Agency.
(e) The Equal Employment Opportunity Commission.
(f) The Federal Trade Commission.
(g) The Department of Health, Education, and Welfare [now Department of Health and Human Services].
(h) The Interstate Commerce Commission.
(i) The Department of Labor.
(j) The National Labor Relations Board.
(k) The Securities and Exchange Commission.
(*l*) The Department of State.
(m) The Department of the Treasury.
(n) The United States Postal Service and
(o) the Veterans Administration.

1-103. The initial members of the Council shall serve for a term of two years. Thereafter, the agencies which compose the membership shall be designated annually by the Council and at least five positions on the Council, other than that held by the Attorney General, shall rotate annually.

1-104. In addition to the above members, the Directors of the Office of Management and Budget and the Office of Personnel Management, or their designees, shall be advisory members of the Council.

1-105. The Attorney General shall chair the Council and provide staff for its operation. Representatives of agencies that are not members of the Council may serve on or chair subcommittees of the Council.

1-2. FUNCTIONS OF THE COUNCIL

1-201. The Council shall promote:

(a) coordination and communication among Federal legal offices;

(b) improved management of Federal lawyers, associated support personnel, and information systems;

(c) improvements in the training provided to Federal lawyers;

(d) the facilitation of the personal donation of pro bono legal services by Federal attorneys;

(e) the use of joint or shared legal facilities in field offices; and

(f) the delegation of legal work to field offices.

1-202. The Council shall study and seek to resolve problems in the efficient and effective management of Federal legal resources that are beyond the capacity or authority of individual agencies to resolve.

1-203. The Council shall develop recommendations for legislation and other actions: (a) to increase the efficient and effective operation and management of Federal legal resources, including those matters specified in Section 1-201, and (b) to avoid inconsistent or unnecessary litigation by agencies.

1-3. LITIGATION NOTICE SYSTEM

1-301. The Attorney General shall establish and maintain a litigation notice system that provides timely information about all civil litigation pending in the courts in which the Federal Government is a party or has a significant interest.

1-302. The Attorney General shall issue rules to govern operation of the notice system. The rules shall include the following requirement:

(a) All agencies with authority to litigate cases in court shall promptly notify the Attorney General about those cases that fall in classes or categories designated from time to time by the Attorney General.

(b) The Attorney General shall provide all agencies reasonable access to the information collected in the litigation notice system.

1-4. RESOLUTION OF INTERAGENCY LEGAL DISPUTES

1-401. Whenever two or more Executive agencies are unable to resolve a legal dispute between them, including the question of which has jurisdiction to administer a particular program or to regulate a particular activity, each agency is encouraged to submit the dispute to the Attorney General.

1-402. Whenever two or more Executive agencies whose heads serve at the pleasure of the President are unable to resolve such a legal dispute, the agencies shall submit the dispute to the Attorney General prior to proceeding in any court, except where there is specific statutory vesting of responsibility for a resolution elsewhere.

1-5. ACCESS TO LEGAL OPINIONS

1-501. In addition to the disclosure now required by law, all agencies are encouraged to make available for public inspection and copying other opinions of their legal officers that are statements of policy or interpretation that have been adopted by the agency, unless the agency determines that disclosure would result in demonstrable harm.

1-502. All agencies are encouraged to make available on request other legal opinions, when the agency determines that disclosure would not be harmful.

1-6. AUTOMATED LEGAL RESEARCH AND INFORMATION SYSTEMS

1-601. The Attorney General, in coordination with the Secretary of Defense and other agency heads, shall provide for a computerized legal research system that will be available to all Federal law offices on a reimbursable basis. The system may include in its data base such Federal regulations, case briefs, and legal opinions, as the Attorney General deems appropriate.

1-602. The Federal Legal Council shall provide leadership for all Federal legal offices in establishing appropriate word processing and management information systems.

1-7. RESPONSIBILITIES OF THE AGENCIES

1-701. Each agency shall (a) review the management and operation of its legal activities and report in one year to the Federal Legal Council all steps being taken to improve those operations, and (b) cooperate with the Federal Legal Council and the Attorney General in the performance of the functions provided by this Order.

1-702. To the extent permitted by law, each agency shall furnish the Federal Legal Council and the Attorney General with reports, information and assistance as requested to carry out the provisions of this Order.

JIMMY CARTER.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 518. Conduct and argument of cases

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 sections 1205, 7105; title 7 section 2050a; title 29 sections 663, 792, 1132; title 30 section 822; title 42 section 7171.

§ 519. Supervision of litigation

CASE MANAGEMENT INFORMATION AND TRACKING SYSTEMS FOR FEDERAL JUDICIAL DISTRICTS AND DIVISIONS OF DEPARTMENT; PREPARATION, SUBMISSION, ETC., OF PLAN

Pub. L. 96-132, § 11, Nov. 30, 1979, 93 Stat. 1047, provided that:

"(a) Not later than April 15, 1980, the Attorney General, after consultation with the Director of the Executive Office of United States Attorneys and such Assistant Attorneys General as he shall deem appropriate, shall prepare and submit to the Committees on the Judiciary of the Senate and House of Representatives a plan for the activation and coordination, within the Department, of compatible, comprehensive case management information and tracking systems for each of the judicial districts of the United States, as described in chapter 5 of title 28 of the United States Code and for each of the divisions of the Department.

"(b) Such plan shall—

"(1) incorporate into the design of such systems all matters and cases involving the United States Attorneys and, where relevant, other departmental resources;

"(2) make provision for identifying and retrieving all relevant data, including—

"(A) complete individual case information from intake or commencement of investigation to final disposition, including identification of the division or office primarily responsible for the case;

"(B) complete information on decisions not to prosecute or litigate alleged violations of the laws of the United States, the stage of the proceedings at which such decisions are made, and the reasons for such decisions; and

"(C) identification of the local, State, or Federal governmental organization, including any organization within the Department of Justice, referring each case for prosecution or litigation;

"(3) take into account the importance of identifying investigations, prosecutions, and litigation in areas which the Attorney General may from time to time designate as high priority;

"(4) consider the application of a case weighting system for evaluating prosecutorial and litigation decisions, dedication of resources, and case management and disposition by all departmental personnel involved;

"(5) emphasize as a goal maximum data retrieval and utilization; and

"(6) include a timetable for implementation of the plan and the costs for implementation."

REPORT TO CONGRESS REGARDING PROVISIONS OF LAW CONSIDERED UNCONSTITUTIONAL BY THE DEPARTMENT OF JUSTICE; DECLARATION OF SUCH POSITION

Pub. L. 96-132, § 21, Nov. 30, 1979, 93 Stat. 1049, provided that:

"(a) The Attorney General shall, during the fiscal year for which appropriations are authorized by this Act [fiscal year ending Sept. 30, 1980], transmit a report to each House of the Congress in any case in which the Attorney General—

"(1) establishes a policy to refrain from the enforcement of any provision of law enacted by the Congress, the enforcement of which is the responsibility of the Department of Justice, because of the position of the Department of Justice that such provision of law is not constitutional; or

"(2) determines that the Department of Justice will contest, or will refrain from defending, any provision of law enacted by the Congress in any proceeding before any court of the United States, or in any administrative or other proceeding, because of the position of the Department of Justice that such provision of law is not constitutional.

"(b) Any report required in subsection (a) shall be transmitted not later than 30 days after the Attorney General establishes the policy specified in subsection (a)(1) or makes the determination specified in subsection (a)(2). Each such report shall—

"(1) specify the provision of law involved;

"(2) include a detailed statement of the reasons for the position of the Department of Justice that such provision of law is not constitutional; and

"(3) in the case of a determination specified in subsection (a)(2), indicate the nature of the judicial, administrative, or other proceeding involved.

"(c) If, during the fiscal year for which appropriations are authorized by this Act [fiscal year ending Sept. 30, 1980], the Attorney General determines that the Department of Justice will contest, or will refrain from defending, any provision of law enacted by the Congress in any proceeding before any court of the United States, or in any administrative or other proceeding, because of the position of the Department of Justice that such provision of law is not constitutional, then the representative of the Department of Justice participating in such proceeding shall make a declaration in such proceeding that such position of the Department of Justice regarding the constitutionality of the provision of law involved constitutes the position of the executive branch of the United States with respect to such matter."

Similar provisions were contained in the following prior appropriation act:

Pub. L. 95-624, § 13, Nov. 9, 1978, 92 Stat. 3464.

STUDY AND REPORT TO CONGRESS ON EXTENT TO WHICH VIOLATIONS OF FEDERAL CRIMINAL LAWS ARE NOT PROSECUTED

Pub. L. 95-624, § 17, Nov. 9, 1978, 92 Stat. 3465, which provided that the Attorney General undertake a study and make recommendations concerning violations of Federal criminal laws which have not been prosecuted and present such study and recommendations to the Committee on the Judiciary of the Senate and the House of Representatives not later than Oct. 1, 1979, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 943; title 19 section 1920; title 42 section 8412.

§ 526. Authority of Attorney General to investigate United States attorneys, marshals, and trustee, clerks of court, and others

(a) The Attorney General may investigate the official acts, records, and accounts of—

(1) the United States attorneys, marshals, and trustees; and

(2) at the request and on behalf of the Director of the Administrative Office of the United States Courts, the clerks of the United States courts and of the district courts of the Canal Zone and the Virgin Islands, probation officers, trustees in cases under title 11, United States magistrates, and court reporters;

for which purpose all the official papers, records, dockets, and accounts of these officers, without exception, may be examined by agents of the Attorney General at any time.

(b) Appropriations for the examination of judicial officers are available for carrying out this section.

(As amended Pub. L. 95-598, title II, §§ 219(a), (b), 220, Nov. 6, 1978, 92 Stat. 2662.)

AMENDMENT OF SUBSEC. (a)(1)

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective

Apr. 1, 1984, any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

AMENDMENT

1978—Pub. L. 95-598, § 219(b), substituted "marshals, and trustee" for "and marshals" in section catchline.

Subsec. (a)(1). Pub. L. 95-518, § 219(a), substituted "marshals, and trustees" for "and marshals".

Subsec. (a)(2). Pub. L. 95-598, § 220, substituted "officers, trustees in cases under title 11" for "officers, referees, trustees and receivers in bankruptcy" and "magistrates" for "commissioners".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 528. Disqualification of officers and employees of the Department of Justice

The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

(Added Pub. L. 95-521, title VI, § 603(a), Oct. 26, 1978, 92 Stat. 1874.)

EFFECTIVE DATE

Section effective Oct. 26, 1978, see section 604 of Pub. L. 95-521, set out as an Effective Date note under section 591 of this title.

§ 529. Annual report of Attorney General

Beginning on June 1, 1979, and at the beginning of each regular session of Congress thereafter, the Attorney General shall report to Congress on the activities and operations of the Public Integrity Section or any other unit of the Department of Justice designated to supervise the investigation and prosecution of—

(1) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a Federal Government officer, employee, or special employee, if such violation relates directly or indirectly to such individual's Federal Government position, employment, or compensation;

(2) any violation of any Federal criminal law relating to lobbying, conflict of interest, campaigns, and election to public office committed by any person, except insofar as such violation relates to a matter involving discrimination or intimidation on grounds of race, color, religion, or national origin;

(3) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a State or local government officer or employee, if such violation relates directly or indirectly to such individual's State or local government position, employment, or compensation; and

(4) such other matters as the Attorney General may deem appropriate.

Such report shall include the number, type, and disposition of all investigations and prosecutions supervised by such Section or such unit, except that such report shall not disclose information which would interfere with any pending investigation or prosecution or which would improperly infringe upon the privacy rights of any individuals.

(Added Pub. L. 95-521, title VI, § 603(a), Oct. 26, 1978, 92 Stat. 1874.)

EFFECTIVE DATE

Section effective Oct. 26, 1978, see section 604 of Pub. L. 95-521, set out as an Effective Date note under section 591 of this title.

CHAPTER 33—FEDERAL BUREAU OF INVESTIGATION

§ 533. Investigative and other officials; appointment

UNDERCOVER OPERATIONS; FINANCIAL AUDIT, REPORTS, ETC.

Pub. L. 96-132, § 7(d), Nov. 30, 1979, 93 Stat. 1046, provided that:

"(1) The Federal Bureau of Investigation shall conduct detailed financial audits of undercover operations closed on or after October 1, 1979, and—

"(A) report the results of each audit in writing to the Department of Justice, and

"(B) report annually to the Congress concerning these audits.

"(2) For the purposes of paragraph (1), 'undercover operation' means any undercover operation of the Federal Bureau of Investigation, other than a foreign counterintelligence undercover operation—

"(A) in which the gross receipts exceed $50,000, and

"(B) which is exempted from section 3617 of the Revised Statutes (31 U.S.C. 484) or section 304(a) of the Government Corporation Control Act (31 U.S.C. 869(a))."

CHAPTER 35—UNITED STATES ATTORNEYS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 sections 1424b, 1617, 1694.

§ 545. Residence

(a) Each United States attorney and assistant United States attorney shall reside in the district for which he is appointed, except that these officers of the District of Columbia, the Southern District of New York, and the Eastern District of New York may reside within 20 miles thereof. The provisions of this subsection shall not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.

[*See main edition for text of* (b)]

(As amended Pub. L. 95-530, § 1, Oct. 27, 1978, 92 Stat. 2028; Pub. L. 96-91, Oct. 25, 1979, 93 Stat. 700.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-91 added provisions authorizing the United States attorney and the assistant United States attorneys for the Eastern District of New York to reside outside the district but within 20 miles thereof.

1978—Subsec. (a). Pub. L. 95-530 added provision that this subsection not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.

CHAPTER 37—UNITED STATES MARSHALS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 sections 1424b, 1614, 1694.

§ 561. United States marshals

[*See main edition for text of* (a) *and* (b)]

(c) The Attorney General shall designate places within the district for the official station and offices of each marshal. Each marshal shall reside within the district for which he was appointed, except that the marshal for the District of Columbia and the Southern District of New York may reside within 20 miles thereof. The preceding sentence shall not apply to any United States marshal appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.

(As amended Pub. L. 95-530, § 2, Oct. 27, 1978, 92 Stat. 2028.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-530 added provision that the requirement that each marshal reside within the district for which he was appointed not apply to any United States marshal appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.

§ 569. Powers and duties generally; supervision by Attorney General

(a) The United States marshal of each district is the marshal of the bankruptcy, of the district court, and of the court of appeals when sitting in his district, and of the Customs Court holding sessions in his district elsewhere than in the Southern and Eastern Districts of New York, and may, in the discretion of the respective courts, be required to attend any session of court.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 95-598, title II, § 221, Nov. 6, 1978, 92 Stat. 2662.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-598 added reference to marshals of the bankruptcy court.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 571. Disbursement of salaries and moneys

(a) The United States marshals, under regulations prescribed by the Attorney General, shall pay the salaries, office expenses and travel and per diem allowances of United States attorneys, their assistants, clerks and messengers, of the marshals, their deputies and clerical assistants, and of the United States trustees, their assistants, staff and other employees.

(b) The United States marshals, under regulations prescribed by the Director of the Administrative Office of the United States Courts, shall pay the salaries, office expenses, and travel and per diem allowances of circuit, district, and bankruptcy judges, clerks of court and their deputies, court reporters, and other personnel of courts within their districts.

[*See main edition for text of* (c)]

(As amended Pub. L. 95-598, title II, §§ 222, 223 Nov. 6, 1978, 92 Stat. 2662.)

AMENDMENT OF SUBSEC. (a)

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective Apr. 1, 1984, any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-598, § 222, added reference to United States trustees, their assistants, staff, and other employees.

Subsec. (b). Pub. L. 95-598, § 223, substituted ", district, and bankruptcy" for "and district".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) by section 222 of Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment of subsec. (b) by section 223 of Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11.

CHAPTER 39—UNITED STATES TRUSTEES[1]

Sec.
581. United States trustees.
582. Assistant United States trustees.
583. Oath of office.
584. Official stations.
585. Vacancies.
586. Duties; supervision by Attorney General.
587. Salaries.
588. Expenses.
589. Staff and other employees.

UNITED STATES TRUSTEE PILOT; REPEAL OF BANKRUPTCY PROVISIONS RELATING TO UNITED STATES TRUSTEES

Pub. L. 95-598, title IV, § 408, Nov. 6, 1978, 92 Stat. 2686, provided that:

"(a) The Attorney General shall conduct such studies and surveys as necessary to evaluate the needs, feasibility, and effectiveness of the United States trustee system, and shall report the result of such studies and surveys to the Congress, the President, and the Judicial Conference of the United States, beginning on or before January 3, 1980, and annually thereafter during the transition period.

"(b) Not later than January 3, 1984, the Attorney General shall report to the Congress, to the President, and the Judicial Conference of the United States, as to the feasibility, projected annual cost and effective-

[1] Another chapter 39, comprising sections 591 to 598 of this title, is set out following section 589.

ness of the United States trustee system, as determined on the basis of the studies and surveys respecting the operation of the United States trustee system in the districts, together with recommendations as to the desirability and method of proceeding with implementation of the United States trustee system in all judicial districts of the United States.

"(c) Chapter 15 of title 11 of the United States Code and chapter 39 of title 28 of the United States Code are repealed, and all references to the United States trustee contained in title 28 of the United States Code are deleted, as of April 1, 1984. The service of any United States trustee, of any assistant United States trustee, and of any employee employed or appointed under the authority of such chapter 39 is terminated on such date."

§ 581. United States trustees

(a) The Attorney General shall appoint one United States trustee for each of the following districts or groups of districts:

(1) District of Maine, District of New Hampshire, District of Massachusetts, and District of Rhode Island.

(2) Southern District of New York.

(3) District of Delaware and District of New Jersey.

(4) Eastern District of Virginia and District of District of Columbia.

(5) Northern District of Alabama.

(6) Northern District of Texas.

(7) Northern District of Illinois.

(8) District of Minnesota, District of North Dakota, District of South Dakota.

(9) Central District of California.

(10) District of Colorado and District of Kansas.

(b) Each United States trustee shall be appointed for a term of seven years. On the expiration of his term, a United States trustee shall continue to perform the duties of his Office until his successor is appointed and qualifies.

(c) Each United States trustee is subject to removal for cause by the Attorney General.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2662.)

REPEAL OF SECTION

Pub. L. 95–598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective Apr. 1, 1984, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95–598 set out in a note preceding section 581 of this title.

EFFECTIVE DATE

Chapter effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 585 of this title.

§ 582. Assistant United States trustees

(a) The Attorney General may appoint one or more assistant United States trustees in any district when the public interest so requires.

(b) Each assistant United States trustee is subject to removal for cause by the Attorney General.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663.)

REPEAL OF SECTION

Pub. L. 95–598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective Apr. 1, 1984, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95–598 set out in a note preceding section 581 of this title.

§ 583. Oath of office

Each United States trustee and assistant United States trustee, before taking office, shall take an oath to execute faithfully his duties.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663.)

REPEAL OF SECTION

Pub. L. 95–598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective Apr. 1, 1984, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95–598 set out in a note preceding section 581 of this title.

§ 584. Official stations

The Attorney General may determine the official stations of the United States trustees and assistant United States trustees within the districts for which they were appointed.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663.)

REPEAL OF SECTION

Pub. L. 95–598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective Apr. 1, 1984, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95–598 set out in a note preceding section 581 of this title.

§ 585. Vacancies

The Attorney General may appoint an acting United States trustee for a district in which the office of United States trustee is vacant, or may designate a United States trustee for another judicial district to serve as trustee for the district in which such vacancy exists. The individual so appointed or designated may serve until the earlier of 90 days after such appointment or designation, as the case may be, or the date on which the vacancy is filled by appointment under section 581 of this title.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663.)

REPEAL OF SECTION

Pub. L. 95–598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective Apr. 1, 1984, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95–598 set out in a note preceding section 581 of this title.

§ 586. Duties; supervision by Attorney General

(a) Each United States trustee, within his district, shall—

(1) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11;

(2) serve as and perform the duties of a trustee in a case under title 11 when required under title 11 to serve as trustee in such a case;

(3) supervise the administration of cases and trustees in cases under chapter 7, 11, or 13 of title 11;

(4) deposit or invest under section 345 of title 11 money received as trustee in cases under title 11;

(5) perform the duties prescribed for the United States trustee under title 11; and

(6) make such reports as the Attorney General directs.

(b) If the number of cases under chapter 13 of title 11 commenced in a particular judicial district so warrant, the United States trustee for such district may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustee, in cases under such chapter. The United States trustee for such district shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.

(c) Each United States trustee shall be under the general supervision of the Attorney General, who shall provide general coordination and assistance to the United States trustees.

(d) The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under subsection (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11.

(e)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11, shall fix—

(A) a maximum annual compensation for such individual, not to exceed the lowest annual rate of basic pay in effect for grade GS–16 of the General Schedule prescribed under section 5332 of title 5; and

(B) a percentage fee, not to exceed ten percent, based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

(2) Such individual shall collect such percentage fee from all payments under plans in the cases under chapter 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall pay to the Treasury—

(A) any amount by which the actual compensation of such individual exceeds five percent upon all payments under plans in cases under chapter 13 of title 11 for which such individual serves as standing trustee; and

(B) any amount by which the percentage for all such cases exceeds—

(i) such individual actual compensation for such cases, as adjusted under subparagraph (A) of this paragraph; plus

(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663.)

REPEAL OF SECTION

Pub. L. 95–598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective Apr. 1, 1984, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95–598 set out in a note preceding section 581 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 11 sections 15326, 15701, 15703, 151302, 151326.

§ 587. Salaries

The Attorney General shall fix the annual salaries of United States trustees and assistant United States trustees at rates of compensation not to exceed the lowest annual rate of basic pay in effect for grade GS–16 of the General Schedule prescribed under section 5332 of title 5.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664.)

REPEAL OF SECTION

Pub. L. 95–598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective Apr. 1, 1984, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95–598 set out in a note preceding section 581 of this title.

§ 588. Expenses

Necessary office expenses of the United States trustee shall be allowed when authorized by the Attorney General.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664.)

REPEAL OF SECTION

Pub. L. 95–598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective Apr. 1, 1984, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95–598 set out in a note preceding section 581 of this title.

§ 589. Staff and other employees

The United States trustee may employ staff and other employees on approval of the Attorney General.

(Added Pub. L. 95-598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664.)

REPEAL OF SECTION

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, provided that, effective Apr. 1, 1984, this section is repealed and any references to United States Trustees in this title are to be deleted. See section 408(c) of Pub. L. 95-598 set out in a note preceding section 581 of this title.

CHAPTER 39—SPECIAL PROSECUTOR[1]

Sec.
591. Applicability of provisions of this chapter.
592. Application for appointment of a special prosecutor.
593. Duties of the division of the court.
594. Authority and duties of a special prosecutor.
595. Reporting and congressional oversight.
596. Removal of a special prosecutor; termination of office.
597. Relationship with Department of Justice.
598. Termination of effect of chapter.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 49 of this title.

§ 591. Applicability of provisions of this chapter

(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives specific information that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense.

(b) The persons referred to in subsection (a) of this section are—

(1) the President and Vice President;

(2) any individual serving in a position listed in section 5312 of title 5;

(3) any individual working in the Executive Office of the President and compensated at a rate not less than the annual rate of basic pay provided for level IV of the Executive Schedule under section 5315 of title 5;

(4) any individual working in the Department of Justice and compensated at a rate not less than the annual rate of basic pay provided for level III of the Executive Schedule under section 5314 of title 5, any Assistant Attorney General, the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

(5) any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President; and

(6) any officer of the principal national campaign committee seeking the election or reelection of the President.

(Added Pub. L. 95-521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1867.)

EFFECTIVE DATE

Section 604 of Pub. L. 95-521 provided that:

"Except as provided in this section, the amendments made by this title [enacting this chapter and sections 49, 528, and 529 of this title] shall take effect on the date of the enactment of this Act [Oct. 26, 1978]. The provisions of chapter 39 of title 28 of the United States Code, as added by section 601 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 591 of such title 28, if the Attorney General determines that—

"(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

"(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of the enactment of this Act; or

"(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act."

CONTINGENCY FUND FOR SPECIAL PROSECUTORS

Section 601(c) of Pub. L. 95-521 provided that: "There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any special prosecutors appointed under chapter 39 (relating to special prosecutor) of title 28 of the United States Code in the carrying out of functions under such chapter."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 592 of this title.

§ 592. Application for appointment of a special prosecutor

(a) The Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title has engaged in conduct described in section 591(a) of this title, shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate.

(b)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court specified in section 593(a) of this title, and the division of the court shall have no power to appoint a special prosecutor.

(2) Such notification shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

(3) Such memorandum shall not be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

(c)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or

[1] Another chapter 39, comprising sections 581 to 589 of this title, is set out above.

prosecution, or if ninety days elapse from the receipt of the information without a determination by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation or prosecution, then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor.

(2) If—

(A) after the filing of a memorandum under subsection (b) of this section, the Attorney General receives additional specific information about the matter to which such memorandum related, and

(B) the Attorney General determines, after such additional investigation as the Attorney General deems appropriate, that such information warrants further investigation or prosecution,

then the Attorney General shall, not later than ninety days after receiving such additional information, apply to the division of the court for the appointment of a special prosecutor.

(d)(1) Any application under this chapter shall contain sufficient information to assist the division of the court to select a special prosecutor and to define that special prosecutor's prosecutorial jurisdiction.

(2) No application or any other documents, materials, or memorandums supplied to the division of the court under this chapter shall be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

(e) The Attorney General may ask a special prosecutor to accept referral of a matter that relates to a matter within that special prosecutor's prosecutorial jurisdiction.

(f) The Attorney General's determination under subsection (c) of this section to apply to the division of the court for the appointment of a special prosecutor shall not be reviewable in any court.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1868.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 593 of this title.

§ 593. Duties of the division of the court

(a) The division of the court to which this chapter refers is the division established under section 49 of this title.

(b) Upon receipt of an application under section 592(c) of this title, the division of the court shall appoint an appropriate special prosecutor and shall define that special prosecutor's prosecutorial jurisdiction. A special prosecutor's identity and prosecutorial jurisdiction shall be made public upon request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such special prosecutor would be in the best interests of justice. In any event the identity and prosecutorial jurisdiction of such prosecutor shall be made public when any indictment is returned or any criminal information is filed.

(c) The division of the court, upon request of the Attorney General which may be incorporated in an application under this chapter, may expand the prosecutorial jurisdiction of an existing special prosecutor, and such expansion may be in lieu of the appointment of an additional special prosecutor.

(d) The division of the court may not appoint as a special prosecutor any person who holds or recently held any office of profit or trust under the United States.

(e) If a vacancy in office arises by reason of the resignation or death of a special prosecutor, the division of the court may appoint a special prosecutor to complete the work of the special prosecutor whose resignation or death caused the vacancy. If a vacancy in office arises by reason of the removal of a special prosecutor, the division of the court may appoint an acting special prosecutor to serve until any judicial review of such removal is completed. Upon the completion of such judicial review, the division of the court shall take appropriate action.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1869.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 592 of this title.

§ 594. Authority and duties of a special prosecutor

(a) Notwithstanding any other provision of law, a special prosecutor appointed under this chapter shall have, with respect to all matters in such special prosecutor's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

(1) conducting proceedings before grand juries and other investigations;

(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such special prosecutor deems necessary;

(3) appealing any decision of a court in any case or proceeding in which such special prosecutor participates in an official capacity;

(4) reviewing all documentary evidence available from any source;

(5) determining whether to contest the assertion of any testimonial privilege;

(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General; and

(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case in the name of the United States.

(b) A special prosecutor appointed under this chapter shall receive compensation at a per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5.

(c) For the purposes of carrying out the duties of the office of special prosecutor, a special prosecutor shall have power to appoint, fix the compensation, and assign the duties, of such employees as such special prosecutor deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS–18 of the General Schedule under section 5332 of title 5.

(d) A special prosecutor may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such special prosecutor's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such special prosecutor's duties.

(e) A special prosecutor may ask the Attorney General or the division of the court to refer matters related to the special prosecutor's prosecutorial jurisdiction. A special prosecutor may accept referral of a matter by the Attorney General, if the matter relates to a matter within such special prosecutor's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the special prosecutor shall notify the division of the court.

(f) A special prosecutor shall, to the extent that such special prosecutor deems appropriate, comply with the written policies of the Department of Justice respecting enforcement of the criminal laws.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1869.)

REFERENCES IN TEXT

Section 6103 of the Internal Revenue Code of 1954, referred to in subsec. (a)(8), is classified to section 6103 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 596, 597 of this title.

§ 595. Reporting and congressional oversight

(a) A special prosecutor appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such special prosecutor. These statements and reports shall contain such information as such special prosecutor deems appropriate.

(b)(1) In addition to any reports made under subsection (a) of this section, and before the termination of a special prosecutor's office under section 596(b) of this title, such special prosecutor shall submit to the division of the court a report under this subsection.

(2) A report under this subsection shall set forth fully and completely a description of the work of the special prosecutor, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such special prosecutor which was not prosecuted.

(3) The division of the court may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as the division deems appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a report under this section available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may in the discretion of such division be included as an appendix to such report.

(c) A special prosecutor shall advise the House of Representatives of any substantial and credible information which such special prosecutor receives that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

(d) The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any special prosecutor appointed under this chapter, and such special prosecutor shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(e) A majority of majority party members or a majority of all nonmajority party members of the Committee on the Judiciary of either House of the Congress may request in writing that the Attorney General apply for the appointment of a special prosecutor. Not later than thirty days after the receipt of such a request, or not later than fifteen days after the completion of a preliminary investigation of the matter with respect to which the request is made, whichever is later, the Attorney General shall provide written notification of any action the Attorney General has taken in response to such request and, if no application has been made to the division of the court, why such application was not made. Such written notification shall be provided to the committee on which the persons making the request serve, and shall not be revealed to any third party,

except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgment prejudice the rights of any individual.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1871.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 596 of this title.

§ 596. Removal of a special prosecutor; termination of office

(a)(1) A special prosecutor appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for extraordinary impropriety, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such special prosecutor's duties.

(2) If a special prosecutor is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, delete or postpone publishing any or all of the report. The division of the court may release any or all of such report in the same manner as a report released under section 595(b)(3) of this title and under the same limitations as apply to the release of a report under that section.

(3) A special prosecutor so removed may obtain judicial review of the removal in a civil action commenced before the division of the court and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief. The division of the court shall cause such an action to be in every way expedited.

(b)(1) An office of special prosecutor shall terminate when (A) the special prosecutor notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such special prosecutor or accepted by such special prosecutor under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions and (B) the special prosecutor files a report in full compliance with section 595(b) of this title.

(2) The division of the court, either on its own motion or upon suggestion of the Attorney General, may terminate an office of special prosecutor at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the special prosecutor or accepted by such special prosecutor under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of termination, the special prosecutor shall file the report required by section 595(b) of this title.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 595 of this title.

§ 597. Relationship with Department of Justice

(a) Whenever a matter is in the prosecutorial jurisdiction of a special prosecutor or has been accepted by a special prosecutor under section 594(e) of this title, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d) of this title, and except insofar as such special prosecutor agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which a special prosecutor participates in an official capacity or any appeal of such a case or proceeding.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872.)

§ 598. Termination of effect of chapter

This chapter shall cease to have effect five years after the date of the enactment of this chapter, except that this chapter shall continue in effect with respect to then pending matters before a special prosecutor that in the judgment of such special prosecutor require such continuation until that special prosecutor determines such matters have been completed.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1873.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in text, is Oct. 26, 1978.

PART III—COURT OFFICERS AND EMPLOYEES

Chap. Sec.
50. Bankruptcy Courts 771

AMENDMENTS

1978—Pub. L. 95–598, title II, § 233(b), Nov. 6, 1978, 92 Stat. 2667, added the item relating to chapter 50.

CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

§ 602. Employees

(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the

provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates.

(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(15)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(c) The Director may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.

(As amended Oct. 28, 1978, Pub. L. 95–539, § 5, 92 Stat. 2044.)

AMENDMENTS

1978—Pub. L. 95–539, among other changes, substituted provision authorizing the Director to appoint and fix the compensation of necessary employees in accordance with chapter 51 and subchapter III of chapter 53 of title 5 for provision authorizing the Director, subject to the provisions of the civil service laws, to appoint necessary employees for the Administrative Office and added provisions relating to appointing and fixing the compensation of certified interpreters, to obtaining personal services as authorized by section 3109 of title 5, and to transferring to the Director all of the functions of the officers and employees of the Administrative Office and all the functions of the organizational units of the Administrative Office with power in the Director to delegate his authority.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 10 of Pub. L. 95–539 provided that:

"(a) Except as provided in subsection (b), this Act [enacting section 1827 and 1828 of this title, amending sections 602, 603, 604, and 1920 of this title, enacting provisions set out as notes under sections 1 and 602 of this title, and repealing a provision set out as a note under this section] shall take effect on the date of the enactment of this Act [Oct. 28, 1978].

"(b) Section 2 of this Act [enacting sections 1827 and 1828 of this title] shall take effect ninety days after the date of the enactment of this Act [Oct. 28, 1978]."

CONTRACT LIMITATIONS

Section 11 of Pub. L. 95–539 provided that: "Any contracts entered into under this Act or any of the amendments made by this Act [enacting sections 1827 and 1828 of this title, amending sections 602, 603, 604, and 1920 of this title, enacting provisions set out as notes under sections 1 and 602 of this title, and repealing a provision set out as a note under this section] shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts."

EMPLOYMENT OF EXPERTS OR CONSULTANTS: RATES

Pub. L. 86–870, § 5(b), Sept. 23, 1959, 73 Stat. 652, which authorized the Director of the Administrative Office of the United States Courts to procure the temporary or intermittent services of experts or consultants was repealed by Pub. L. 95–539, § 8, Oct. 28, 1978, 92 Stat. 2044.

§ 603. Salaries

The salary of the Director shall be the same as the salary of a district judge. The salary of the Deputy Director shall be in the same amount as the annual rate of basic pay for positions at level V of the Executive Schedule under section 5316 of title 5.

(As amended Oct. 28, 1978, Pub. L. 95–539, § 6, 92 Stat. 2044.)

AMENDMENTS

1978—Pub. L. 95–539 struck out provision authorizing the Director to fix the compensation of Administrative Office employees in accordance with the Classification Act of 1949.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–539 effective Oct. 28, 1978, see section 10(a) of Pub. L. 95–539, set out as an Effective Date of 1978 Amendment note under section 602 of this title.

§ 604. Duties of Director generally

(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:

[*See main edition for text of (1) to (9)*]

(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services for pretrial services agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5);

[*See main edition for text of (11) and (12)*]

(13) Pursuant to section 1827 of this title, establish a program for the certification and

utilization of interpreters in courts of the United States;

(14) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

(15)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees, and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

(16) In the Director's discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102 of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;

(17) Lay before Congress, annually, statistical tables that will accurately reflect the business transacted by the several bankruptcy courts, and all other pertinent data relating to such courts;

(18) Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States.

[*See main edition for text of (b) and (c)*]

(d) The Director, under the supervision and direction of the conference, shall:

[*See main edition for text of (1) and (2)*]

(3) lay before Congress annually statistical tables and other information which will accurately reflect the business which has come before the various United States magistrates, including (A) the number of matters in which the parties consented to the exercise of jurisdiction by a magistrate, (B) the number of appeals taken pursuant to the decisions of magistrates and the disposition of such appeals, and (C) the professional background and qualifications of individuals appointed under section 631 of this title to serve as magistrate;

[*See main edition for text of (4); (e)*]

(f) The Director may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out the Director's functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government as the Director determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

(f)[1] For each bankruptcy court, the Director shall name qualified persons to membership on the panel of trustees. The number and qualifications of persons named to membership on the panel of trustees shall be determined by rules and regulations to be adopted by the Director. An individual named to membership on the panel of trustees shall have a residency or office in the State served by the court or in any adjacent State. A corporation named to membership on the panel of trustees shall be authorized by its charter or by law to act as trustee and shall have an office in the State served by the court. The Director on his own initiative may at any time remove for cause a person named to a panel of trustees or remove a trustee appointed from the panel.

(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired, but any transaction carried out under the authority of this subsection shall be evidenced in writing.

(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods not exceeding ten years.

(As amended Oct. 28, 1978, Pub. L. 95-539, §§ 3, 4, 92 Stat. 2043; Nov. 6, 1978, Pub. L. 95-598, title II, § 225, 92 Stat. 2665; Oct. 10, 1979, Pub. L. 96-82, § 5, 93 Stat. 645.)

CODIFICATION

Par. (17) of subsec. (a), which was added as par. (13) by Pub. L. 95-598, title II, § 225(a)(2), Nov. 6, 1978, 92 Stat. 2665, effective Oct. 1, 1979, without reference to the prior addition of another par. (13) by Pub. L. 95-539, § 3 (c), Oct. 28, 1978, 92 Stat. 2043, effective Oct. 28, 1978, was editorially redesignated (17) to conform to the probable intent of Congress.

Par. (18) of subsec. (a), which was formerly par. (13) of subsec. (a) which was redesignated par. (14) by Pub. L. 95-598, title II, § 225(a)(1), Nov. 6, 1978, 92 Stat. 2665, effective Oct. 1, 1979, without reference to the prior redesignation of such par. (13) as par. (17) by Pub. L. 95-539, § 3(b), Oct. 28, 1978, 92 Stat. 2043, effective Oct. 28, 1978, and also without reference to the prior addition of another par. (14) by Pub. L. 95-539, § 3(c), Oct. 28, 1978, 92 Stat. 2043, effective Oct. 28, 1978, was editorially redesignated (18) to conform to the probable intent of Congress.

Subsec. (f), set out second, was added by Pub. L. 95-598, title II, § 225(b), Nov. 6, 1978, 92 Stat. 2665, effective Oct. 1, 1979, without reference to the prior addition of another subsec. (f) by Pub. L. 95-539, § 4, Oct. 28, 1978, 92 Stat. 2043, effective Oct. 28, 1978.

AMENDMENTS

1979—Subsec. (d)(3). Pub. L. 96-82 added cls. (A), (B), and (C).

1978—Subsec. (a)(10). Pub. L. 95-539, § 3(a), expanded the duties of the Director to include providing or making available equipment for interpretation of proceedings in accordance with section 1828 of this title and to include entering into and performing contracts necessary to the conduct of the work of the judicial branch and exempted from the provisions of section 5 of title 41 contracts for nonpersonal services for pre-

[1] So in original. See Codification note below.

trial agencies, for interpretation of proceedings, and for special interpretation services pursuant to section 1828 of this title.

Subsec. (a)(13), (14). Pub. L. 95-598, § 225(a), added par. (13), relating to annual statistical tables reflecting the business of the several bankruptcy courts, and redesignated former par. (13), relating to the performance of other duties assigned by the Supreme Court or the Judicial Conference, as (14). See Codification note above for redesignation of pars. (13) and (14) as (17) and (18).

Subsec. (a)(13) to (16). Pub. L. 95-539, § 3(b), (c), added pars. (13) to (16). Former par. (13) redesignated (17).

Subsec. (a)(17). Pub. L. 95-539, § 3(b), redesignated former par. (13) as (17).

Subsec. (a)(17), (18). See Amendment note for subsec. (a)(13) and (14) above and also Codification note above.

Subsec. (f). Pub. L. 95-598, § 225(b), added subsec. (f), relating to the naming of qualified persons to membership on the panel of trustees. See Codification note above.

Subsecs. (f), (g). Pub. L. 95-539, § 4, added subsecs. (f) and (g).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-539 effective Oct. 28, 1978, see section 10(a) of Pub. L. 95-539, set out as an Effective Date of 1978 Amendment note under section 602 of this title.

COMPENSATION OF SECRETARIES AND LAW CLERKS

Pub. L. 96-68, title IV, § 400, Sept. 24, 1979, 93 Stat. 428, provided in part: "That the salaries of secretaries and law clerks to circuit and district judges shall not exceed the compensation established in chapter 51 of title 5, United States Code, for General Schedule [5 U.S.C. 5332 note] grade (GS) 11 and grade (GS) 13, respectively: *Provided further,* That (exclusive of step increases corresponding with those provided for by chapter 53 of title 5 of the United States Code, post differential and allowances for employees stationed outside the continental United States and in Alaska and of compensation paid for temporary assistance needed because of an emergency) the aggregate salaries paid to secretaries and law clerks appointed by each of the circuit and district judges shall not exceed $101,162 and $65,979 per annum, respectively, except in the case of the chief judge of each circuit and the chief judge of each district court having five or more district judges, in which case the aggregate salaries shall not exceed $120,425 and $81,899 per annum, respectively: *Provided further,* That the chief judge of each circuit may appoint a senior staff attorney to the court at a rate of compensation not to exceed General Schedule grade (GS) 15, without regard to the limitations referred to above."

Similar provisions were contained in the following acts:

Oct. 10, 1978, Pub. L. 95-431, title IV, § 401, 92 Stat. 1037.

Aug. 2, 1977, Pub. L. 95-86, title IV, § 401, 91 Stat. 435.

July 14, 1976, Pub. L. 94-362, title IV, § 401, 90 Stat. 953.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 1871 of this title; title 11 sections 701, 703.

§ 610. Courts defined

As used in this chapter the word "courts" includes the courts of appeals, district courts, and bankruptcy courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 226, 92 Stat. 2665.)

AMENDMENTS

1978—Pub. L. 95-598 inserted reference to bankruptcy courts.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 42—FEDERAL JUDICIAL CENTER

Sec.
[629. Repealed.]

AMENDMENTS

1978—Pub. L. 95-598, title II, § 230(2), Nov. 6, 1978, 92 Stat. 2665, struck out item 629 "Organizational provisions".

§ 620. Federal Judicial Center

[*See main edition for text of (a)*]

(b) The Center shall have the following functions:

[*See main edition for text of (1) and (2)*]

(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government, including, but not limited to, judges, clerks of court, probation officers, and United States magistrates; and

[*See main edition for text of (4)*]

(As amended Pub. L. 95-598, title II, § 227, Nov. 6, 1978, 92 Stat. 2665.)

AMENDMENTS

1978—Subsec. (b)(3). Pub. L. 95-598 struck out references to referees and commissioners and added reference to magistrates.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 621. Board; composition, tenure of members, compensation

(a) The activities of the Center shall be supervised by a Board to be composed of—

[*See main edition for text of (1)*]

(2) two active judges of the courts of appeals of the United States, three active judges of the district courts of the United States, one active judge of the bankruptcy courts of the United States elected by vote of the members of the Judicial Conference of the United States: *Provided, however,* That the judges so elected shall not be members of the Judicial Conference of the United States; and

[*See main edition for text of* (3)]

(b) The term of office of each elected member of the Board shall be four years. A member elected to serve for an unexpired term arising by virtue of the death, disability, retirement, or resignation of a member shall be elected only for such unexpired term.

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 95-598, title II, §§ 228, 229, Nov. 6, 1978, 92 Stat. 2665.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-598, § 228, added reference to one active judge of the bankruptcy courts of the United States.

Subsec. (b). Pub. L. 95-598, § 229, struck out provisions requiring that section 629 of this title govern the terms of office of the first members elected to the Board.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

[§ 629. Repealed. Pub. L. 95-598, title II, § 230(1), Nov. 6, 1978, 92 Stat. 2665]

Section, added Pub. L. 90-219, title I, § 101, Dec. 20, 1967, 81 Stat. 667, related to organization provisions for the Board.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 43—UNITED STATES MAGISTRATES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 sections 1424b, 1694.

§ 631. Appointment and tenure

(a) The judges of each United States district court and the district court of the Virgin Islands shall appoint United States magistrates in such numbers and to serve at such locations within the judicial district as the conference may determine under this chapter. In the case of a magistrate appointed by the district court of the Virgin Islands, this chapter shall apply as though the court appointing such magistrate were a United States district court. Where there is more than one judge of a district court, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge. Where the conference deems it desirable, a magistrate may be designated to serve in one or more districts adjoining the district for which he is appointed. Such a designation shall be made by the concurrence of a majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate in the adjoining district or districts.

(b) No individual may be appointed or reappointed to serve as a magistrate under this chapter unless:

(1) He is, and has been for at least 5 years, a member in good standing of the bar of the highest court of the State in which he is to serve, or, in the case of an individual appointed to serve—

(A) in the District of Columbia, a member in good standing of the bar of the United States district court for the District of Columbia; or

(B) in the Commonwealth of Puerto Rico, a member in good standing of the bar of the Supreme Court of Puerto Rico, and in the Virgin Islands of the United States, a member in good standing of the bar of the district court of the Virgin Islands;

except that an individual who does not meet the bar membership requirements of the first sentence of this paragraph may be appointed and serve as a part-time magistrate if the appointing court or courts and the conference find that no qualified individual who is a member of the bar is available to serve at a specific location;

(2) He is determined by the appointing district court or courts to be competent to perform the duties of the office;

(3) In the case of an individual appointed to serve in a national park, he resides within the exterior boundaries of that park, or at some place reasonably adjacent thereto;

(4) He is not related by blood or marriage to a judge of the appointing court or courts at the time of his initial appointment; and

(5) He is selected pursuant to standards and procedures promulgated by the Judicial Conference of the United States. Such standards and procedures shall contain provision for public notice of all vacancies in magistrate positions and for the establishment by the district courts of merit selection panels, composed of residents of the individual judicial districts, to assist the courts in identifying and recommending persons who are best qualified to fill such positions.

(c) A magistrate may hold no other civil or military office or employment under the United States: *Provided, however,* That, with the approval of the conference, a clerk or deputy clerk of a court of the United States may be appointed and serve as a part-time United States magistrate, but the conference shall fix the aggregate amount of compensation to be received for performing the duties of part-time magistrate and clerk or deputy clerk: *And provided further,* That retired officers and retired enlisted personnel of the Regular and Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, members of the Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and members of the Army National Guard of the United States, the Air National Guard of the United States, and the Naval Militia and of the National Guard of a State, territory, or the District of Columbia, except the National Guard disbursing officers who are on a full-time salary basis, may be appointed and serve as United States magistrates.

[*See main edition for text of* (d) *and* (e)]

(f) Upon the expiration of his term, a magistrate may, by a majority vote of the judges of the appointing district court or courts and with the approval of the judicial council of the circuit, continue to perform the duties of his office until his successor is appointed, or for 60 days after the date of the expiration of the magistrate's term, whichever is earlier.

(g) Each individual appointed as a magistrate under this section shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of his office.

(h) Each appointment made by a judge or judges of a district court shall be entered of record in such court, and notice of such appointment shall be given at once by the clerk of that court to the Director.

(i) Removal of a magistrate during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but a magistrate's office shall be terminated if the conference determines that the services performed by his office are no longer needed. Removal shall be by the judges of the district court for the judicial district in which the magistrate serves; where there is more than one judge of a district court, removal shall not occur unless a majority of all the judges of such court concur in the order of removal; and when there is a tie vote of the judges of the district court on the question of the removal or retention in office of a magistrate, then removal shall be only by a concurrence of a majority of all the judges of the council. In the case of a magistrate appointed under the third sentence of subsection (a) of this section, removal shall not occur unless a majority of all the judges of the appointing district courts concur in the order of removal; and where there is a tie vote on the question of the removal or retention in office of a magistrate, then removal shall be only by a concurrence of a majority of all the judges of the council or councils. Before any order or removal shall be entered, a full specification of the charges shall be furnished to the magistrate, and he shall be accorded by the judge or judges of the removing court, courts, council, or councils an opportunity to be heard on the charges.

(j)(1) A magistrate who is inducted into the Armed Forces of the United States pursuant to the Military Selective Service Act of 1967 (50 U.S.C. App. 451 et seq.), or is otherwise ordered to active duty with such forces for a period of more than thirty days, and who makes application for a leave of absence to the district court or courts which appointed him, shall be granted a leave of absence without compensation for such period as he is required to serve in such forces. Every application for a leave of absence under this subsection shall include a copy of the official orders requiring the magistrate's military service. The granting of a leave of absence under this subsection shall not operate to extend the term of office of any magistrate.

(2) A magistrate granted a leave of absence under this subsection who—

(A) receives a certificate of service under section 9(a) of the Military Selective Service Act of 1967 (50 U.S.C. App. 459(a)), or is released under honorable conditions from the military service,

(B) makes application for reinstatement to regular service in office as a magistrate within ninety days after he is released from such service or training or from hospitalization continuing after discharge for a period of not more than one year, and

(C) is determined by the appointing court or courts in the manner specified in subsection (a) of this section to be still qualified to perform the duties of such position,

shall be reinstated in regular service in such office.

(k) Upon the grant by the appropriate district court or courts of a leave of absence to a magistrate entitled to such relief under the terms of subsection (i) of this section, such court or courts may proceed to appoint, in the manner specified in subsection (a) of this section, another magistrate, qualified for appointment and service under subsections (b), (c), and (d) of this section, who shall serve for the period specified in subsection (e) of this section.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 231, 92 Stat. 2665; Oct. 10, 1979, Pub. L. 96-82, § 3(a)-(d), 93 Stat. 644, 645.)

REFERENCES IN TEXT

Subsection (i) of this section, referred to in subsec. (k), probably means subsec. (j) of this section in view of the redesignation of former subsec. (i) as (j).

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-82, § 3(a), substituted "Where the conference deems it desirable, a magistrate may be designated to serve in one or more districts adjoining the district for which he is appointed" and "Such a designation shall be made by the concurrence of a majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate in the adjoining district or districts" for "Where an area under the administration of the National Park Service, or the United States Fish and Wildlife Service, or any other Federal agency, extends into two or more judicial districts and it is deemed desirable by the conference that the territorial jurisdiction of a magistrate's appointment include the entirety of such area, the appointment or reappointment shall be made by the concurrence of a majority of all judges of the district courts of the judicial districts involved, and where there is no such concurrence by the concurrence of the chief judges of such district courts".

Subsec. (b). Pub. L. 96-82, § 3(b), substituted "appointed or reappointed to serve" for "appointed or serve" in the provisions preceding par. (1), inserted ", and has been for at least 5 years," following "He is" in the provisions of par. (1) preceding subpar. (A) thereof, struck out subpar. (C) relating to service by members in good standing of the bar of the highest court of one of the two or more States where the area involved is under the administration of the National Park Service, the United States Fish and Wildlife Service, or any other Federal agency that extends to two or more States.

Subsec. (b)(5). Pub. L. 96-82, § 3(c), added par. (5).

Subsec. (f). Pub. L. 96-82, § 3(d)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsecs. (g) to (k). Pub. L. 96-82, § 3(d)(1), redesignated former subsecs. (f) to (j) as (g) to (k), respectively.

1978—Subsec. (c). Pub. L. 95-598 struck out "a part-time referee in bankruptcy or" following "of the conference," and "part-time referee in bankruptcy," following "magistrate and"

EFFECTIVE DATE OF 1979 AMENDMENT

Section 3(g) of Pub. L. 96–82 provided that: "The amendment made by subsection (c) of this section [enacting subsec. (b)(5) of this section] shall not take effect until 30 days after the meeting of the Judicial Conference of the United States next following the effective date of this Act [Oct. 10, 1979]." [The meeting of the Judicial Conference took place on Mar. 5 and 6, 1980.]

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SHORT TITLE OF 1979 AMENDMENT

Section 1 of Pub. L. 96–82 provided: "That this Act [amending sections 604, 631, 633, 634, 635, 636, and 1915 of this title, and section 3401 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section] may be cited as the 'Federal Magistrate Act of 1979'."

DUE CONSIDERATION BY MERIT SELECTION PANELS OF WOMEN, BLACKS, HISPANICS, AND OTHER MINORITIES

Section 3(e) of Pub. L. 96–82 provided that: "The merit selection panels established under section 631(b)(5) of title 28, United States Code, in recommending persons to the district court, shall give due consideration to all qualified individuals, especially such groups as women, blacks, Hispanics, and other minorities."

MAGISTRATES SERVING PRIOR TO PROMULGATION OF MAGISTRATE SELECTION STANDARDS AND PROCEDURES BY JUDICIAL CONFERENCE; REAPPOINTMENT; CERTIFICATION AS QUALIFIED

Section 3(f) of Pub. L. 96–82 provided that: "Magistrates serving prior to the promulgation of magistrate selection standards and procedures by the Judicial Conference of the United States may only exercise the jurisdiction conferred under the amendment made by section 2 of this Act [enacting section 636(c) of this title] after having been reappointed under such standards and procedures or after having been certified as qualified to exercise such jurisdiction by the judicial council of the circuit in which the magistrate serves."

JUDICIAL CONFERENCE STUDY OF THE FUTURE OF THE MAGISTRATE SYSTEM

Section 9 of Pub. L. 96–82 provided that: "The Judicial Conference of the United States shall undertake a study, to begin within 90 days after the effective date of this Act [Oct. 10, 1979] and to be completed and made available to Congress within 24 months thereafter, concerning the future of the magistrate system, the precise scope of such study to be recommended by the Chairmen of the Judiciary Committees of each House of Congress."

AUTHORIZATION OF APPROPRIATION

Section 10 of Pub. L. 96–82 provided that: "Such sums as may be necessary to carry out the purposes of this Act [see Short Title of 1979 Amendment note above] are hereby authorized to be appropriated for expenditure on or after October 1, 1979."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 636, 751 of this title.

§ 633. Determination of number, locations, and salaries of magistrates

[*See main edition for text of* (a) *and* (b)]

(c) Changes in number, locations, and salaries

Except as otherwise provided in this chapter, the conference may, from time to time, in the light of the recommendations of the Director, the district courts, and the councils, change the number, locations, and salaries of full-time and part-time magistrates, as the expeditious administration of justice may require.

(As amended Oct. 10, 1979, Pub. L. 96–82, § 4, 93 Stat. 645.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–82 struck out provision that determinations of the conference changing the number, locations, and salaries of full-time and part-time magistrates take effect sixty days after they are promulgated.

§ 634. Compensation

(a) Officers appointed under this chapter shall receive as full compensation for their services salaries to be fixed by the conference pursuant to section 633 of this title, at rates not to exceed $48,500 per annum, subject to adjustment in accordance with section 225 of the Federal Salary Act of 1967 and section 461 of this title, except that the salary of a part-time United States magistrate shall not be less than $100 nor more than one-half the maximum salary payable to a full-time magistrate. In fixing the amount of salary to be paid to any officer appointed under this chapter, consideration shall be given to the average number and the nature of matters that have arisen during the immediately preceding period of five years, and that may be expected thereafter to arise, over which such officer would have jurisdiction and to such other factors as may be material. Disbursement of salaries shall be made by or pursuant to the order of the Director.

[*See main edition for text of* (b)]

(c) All United States magistrates, effective upon their taking the oath or affirmation of office, and all necessary legal, clerical, and secretarial assistants employed in the offices of full-time United States magistrates shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of subsection III[1] (relating to civil service retirement) of chapter 83, chapter 87 (relating to Federal employees' group life insurance), and chapter 89 (relating to Federal employees' health benefits program) of title 5. Part-time magistrates shall not be excluded from coverage under these chapters solely for lack of a prearranged regular tour of duty.

(As amended Nov. 6, 1978, Pub. L. 95–598, title II, § 232, 92 Stat. 2665; Oct. 10, 1979, Pub. L. 96–82, § 8(b), 93 Stat. 647.)

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in subsec. (a), is section 225 of Pub. L. 90–206, title II, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

[1] So in original. Should read "subchapter III".

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-82 added reference to legal assistants.

1978—Subsec. (a). Pub. L. 95-598 substituted "not to exceed $48,500 per annum, subject to adjustment in accordance with section 225 of the Federal Salary Act of 1967 and section 461 of this title," for "for full-time and part-time United States magistrates not to exceed the rates now or hereafter provided for full-time and part-time referees in bankruptcy, respectively, referred to in section 40a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended,".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 635. Expenses

(a) Full-time United States magistrates serving under this chapter shall be allowed their actual and necessary expenses incurred in the performance of their duties, including the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils of the circuits, considers necessary, and the compensation of necessary clerical and secretarial assistance. Such expenses and compensation shall be determined and paid by the Director under such regulations as the Director shall prescribe with the approval of the conference. The Administrator of General Services shall provide such magistrates with necessary courtrooms, office space, furniture and facilities within United States courthouses or office buildings owned or occupied by departments or agencies of the United States, or should suitable courtroom and office space not be available within any such courthouse or office building, the Administrator of General Services, at the request of the Director, shall procure and pay for suitable courtroom and office space, furniture and facilities for such magistrate in another building, but only if such request has been approved as necessary by the judicial council of the appropriate circuit.

[*See main edition for text of* (b)]

(As amended Oct. 10, 1979, Pub. L. 96-82, § 8(a), 93 Stat. 646.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-82 added reference to the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils of the circuits, considers necessary.

§ 636. Jurisdiction, powers, and temporary assignment

[*See main edition for text of* (a) *and* (b)]

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate may exercise such jurisdiction, if such magistrate meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of their right to consent to the exercise of such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, neither the district judge nor the magistrate shall attempt to persuade or induce any party to consent to reference of any civil matter to a magistrate. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court. In this circumstance, the consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) Notwithstanding the provisions of paragraph (3) of this subsection, at the time of reference to a magistrate, the parties may further consent to appeal on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules promulgated by the conference shall endeavor to make such appeal expeditious and inexpensive. The district court may affirm, reverse, modify, or remand the magistrate's judgment.

(5) Cases in the district courts under paragraph (4) of this subsection may be reviewed by the appropriate United States court of appeals upon petition for leave to appeal by a party stating specific objections to the judgment. Nothing in this paragraph shall be construed to be a limitation on any party's right to seek review by the Supreme Court of the United States.

(6) The court may, for good cause shown on its own motion, or under extraordinary cir-

cumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.

(7) The magistrate shall determine, taking into account the complexity of the particular matter referred to the magistrate, whether the record in the proceeding shall be taken, pursuant to section 753 of this title, by electronic sound recording means, by a court reporter appointed or employed by the court to take a verbatim record by shorthand or by mechanical means, or by an employee of the court designated by the court to take such a verbatim record. Notwithstanding the magistrate's determination, (A) the proceeding shall be taken down by a court reporter if any party so requests, (B) the proceeding shall be recorded by a means other than a court reporter if all parties so agree, and (C) no record of the proceeding shall be made if all parties so agree. Reporters referred to in this paragraph may be transferred for temporary service in any district court of the judicial circuit for reporting proceedings under this subsection, or for other reporting duties in such court.

(d) The practice and procedure for the trial of cases before officers serving under this chapter, and for the taking and hearing of appeals to the district courts, shall conform to rules promulgated by the Supreme Court pursuant to section 3402 of title 18, United States Code.

(e) In a proceeding before a magistrate, any of the following acts or conduct shall constitute a contempt of the district court for the district wherein the magistrate is sitting: (1) disobedience or resistance to any lawful order, process, or writ; (2) misbehavior at a hearing or other proceeding, or so near the place thereof as to obstruct the same; (3) failure to produce, after having been ordered to do so, any pertinent document; (4) refusal to appear after having been subpenaed or, upon appearing, refusal to take the oath or affirmation as a witness, or, having taken the oath or affirmation, refusal to be examined according to law; or (5) any other act or conduct which if committed before a judge of the district court would constitute contempt of such court. Upon the commission of any such act or conduct, the magistrate shall forthwith certify the facts to a judge of the district court and may serve or cause to be served upon any person whose behavior is brought into question under this section an order requiring such person to appear before a judge of that court upon a day certain to show cause why he should not be adjudged in contempt by reason of the facts so certified. A judge of the district court shall thereupon, in a summary manner, hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a judge of the court, or commit such person upon the conditions applicable in the case of defiance of the process of the district court or misconduct in the presence of a judge of that court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate may be temporarily assigned to perform any of the duties specified in subsection (a) or (b) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

(g) A United States magistrate may perform the verification function required by section 4107 of title 18, United States Code. A magistrate may be assigned by a judge of any United States district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(As amended Oct. 28, 1977, Pub. L. 95-144, § 2, 91 Stat. 1220; Oct. 10, 1979, Pub. L. 96-82, § 2, 93 Stat. 643.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure for the United States district courts, referred to in subsecs. (b)(2) and (c)(3), are classified generally to the appendix to this title.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-82, § 2(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsecs. (d) to (g). Pub. L. 96-82, § 2(1), redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

1977—Subsec. (f). Pub. L. 95-144 added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2149; title 19 section 1915; title 46 section 1484.

CHAPTER 49—DISTRICT COURTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 sections 1424b, 1694.

§ 751. Clerks

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 752. Law clerks and secretaries

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 753. Reporters

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 636, 775 of this title.

CHAPTER 50—BANKRUPTCY COURTS

Sec.
771. Clerks.
772. Other employees.
773. Records of proceedings; reporters.
774. Power to appoint.
775. Salaries of employees.

§ 771. Clerks

(a) Based on need each bankruptcy court may appoint a clerk who shall be subject to removal only by the court.

(b) The clerk may appoint, with the approval of the court, necessary deputies, clerical assistants, and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies, clerical assistants, and employees shall be subject to removal only by the clerk with the approval of the court. If there is no clerk, the Bankruptcy Judge shall perform the duties of this subsection.

(c) The clerk of each bankruptcy court shall reside in the district for which he is appointed. The bankruptcy court may designate places within the district for the offices of the clerk and his deputies, and their official stations.

(d) A clerk of a bankruptcy court or his deputy or assistant shall not receive any compensation or emoluments through any office or position to which he is appointed by the court, other than that received as such clerk, deputy or assistant, whether from the United States or from private litigants.

(e) The clerk of each bankruptcy court shall pay into the Treasury all fees, costs and other moneys collected by him, except uncollected fees not required by Act of Congress to be prepaid.

He shall make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

(Added Pub. L. 95-598, title II, § 233(a), Nov. 6, 1978, 92 Stat. 2666.)

EFFECTIVE DATE

Chapter effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 772. Other employees

Bankruptcy judges may appoint necessary other employees, including law clerks and secretaries, subject to any limitation on the aggregate salaries of such employees which may be imposed by law.

(Added Pub. L. 95-598, title II, § 233(a), Nov. 6, 1978, 92 Stat. 2666.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 773. Records of proceedings; reporters

(a) The bankruptcy court shall require a record to be made, whenever practicable, of all proceedings in cases had in open court. The Judicial Conference shall prescribe that the record be taken by electronic sound recording means, by a court reporter appointed or employed by such bankruptcy court to take a verbatim record by shorthand or mechanical means, or by an employee of such court designated by such court to take such a verbatim record.

(b) On the request of a party to a proceeding that has been recorded who has agreed to pay the fee for a transcript, or a judge of the bankruptcy court, a transcript of the original record of the requested parts of such proceeding shall be made and delivered promptly to such party or judge. Any such transcript that is certified shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcript of the proceedings of the bankruptcy court shall be considered as official except those made from certified records.

(c) Fees for transcripts furnished in proceedings to persons permitted to appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).

(Added Pub. L. 95-598, title II, § 233(a), Nov. 6, 1978, 92 Stat. 2666.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 774. Power to appoint

Whenever a majority of the bankruptcy judges of any bankruptcy court cannot agree upon the appointment of any officer of such court, the chief judge shall make such appointment.

(Added Pub. L. 95-598, title II, § 233(a), Nov. 6, 1978, 92 Stat. 2667.)

§ 775. Salaries of employees

The salary of an individual appointed or employed under section 771(a), 772, or 773(a) of this title shall be the same as the salary of an individual appointed or employed under section 751(a), 752, or 753(a) of this title, as the case may be. The salaries of individuals appointed under section 771(b) of this title shall be comparable to the salaries of individuals appointed under section 751(b) of this title.

(Added Pub. L. 95-598, title II, § 233(a), Nov. 6, 1978, 92 Stat. 2667.)

CHAPTER 51—COURT OF CLAIMS

§ 792. Commissioners

(a) The Court of Claims may appoint sixteen commissioners who shall be subject to removal by the court and shall devote all their time to the duties of the office. The Court shall designate one of the commissioners to serve at the will of the court as chief commissioner.

[*See main edition for text of* (b)]

(As amended July 20, 1977, Pub. L. 95-69, § 3, 91 Stat. 274.)

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-69 increased the number of commissioners from fifteen to sixteen.

SALARY RATE LIMITATIONS FOR USE OF FUNDS FOR FISCAL YEAR 1980

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95-391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96-86, set out as a note under section 5318 of Title 5, Government Organization and Employees.

COMPENSATION OF COMMISSIONERS

Salaries of commissioners increased to $51,200 effective on the first day of the first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95-391, title III, § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $48,500.

CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES

§ 957. Clerks ineligible for certain offices

(a) A clerk of a district court or bankruptcy court or any of his deputies shall not be appointed a commissioner, master, referee or receiver in any case, unless there are special reasons requiring such appointment which are recited in the order of appointment.

[*See main edition for text of* (b)]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 234, 92 Stat. 2667.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-598 added reference to bankruptcy court.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 959. Trustees and receivers suable; management; State laws

[*See main edition for text of* (a)]

(b) Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 235, 92 Stat. 2667.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-598 substituted "Except as provided in section 1166 of title 11, a trustee" for "A trustee".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

PART IV—JURISDICTION AND VENUE

Chap. Sec.
90. District Courts and Bankruptcy Courts 1471

AMENDMENTS

1978—Pub. L. 95-598, title II, § 241(b), Nov. 6, 1978, 92 Stat. 2671, added the item relating to chapter 90.

CHAPTER 81—SUPREME COURT

§ 1251. Original jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

(As amended Sept. 30, 1978, Pub. L. 95-393, § 8(b), 92 Stat. 810.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-393, § 8(b)(1), designated the introductory provision of subsec. (a) and (a)(1) as (a), and struck out "(2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations."

Subsec. (b)(1). Pub. L. 95-393, § 8(b)(2), substituted "to which ambassadors, other public ministers, consuls, or" for "brought by ambassadors or other public ministers of foreign states or to which consuls or"

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-393 effective at the end of the ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95-393, set out as an Effective Date note under section 254a of Title 22, Foreign Relations and Intercourse.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2350 of this title; title 2 section 437g; title 5 section 1508, 7123; title 7 sections 136n, 194, 2050; title 12 sections 1464, 1730, 1730a, 1786, 1818; title 15 sections 21, 29, 45, 57a, 77i, 78aa, 79x, 79y, 80a-42, 80a-43, 80b-13, 687a, 687e, 717r, 1193, 1262, 1394, 1474, 1710, 1719, 1913, 2004, 2008,

2060, 2618, 3416; title 16 sections 825*l*, 825p; title 19 sections 1641, 2322; title 20 sections 351d, 585, 1070c-3, 1128, 1132a-7, 1207, 1234d, 1263, 1413, 1416, 2309 title 21 sections 346a, 348, 355, 360g, 371; title 22 section 1631e, 2740, 2851, 3086; title 23 section 131; title 26 sections 3310, 6363, 7482; title 27 section 204; title 29 sections 160, 210, 660, 667; title 30 section 816; title 31 section 1263; title 33 sections 505, 520, 988; title 38 section 784; title 40 section 333; title 42 sections 263a, 263*f*, 291h, 504, 1316, 2022, 2689*l*, 3027, 3414, 3785, 5311, 5405, 6068, 6306, 6869, 8412; title 45 section 153; title 47 section 402; title 49 sections 45, 1486, 1674b, 1675, 2005.

§ 1255. Court of Claims; certiorari; certified questions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 70v-3; title 50 App. section 1218a.

§ 1257. State courts; appeal; certiorari

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 3207; title 16 section 2633.

§ 1258. Supreme Court of Puerto Rico; appeal; certiorari

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 3207; title 16 section 2633.

CHAPTER 83—COURTS OF APPEALS

Sec.
1293. Bankruptcy appeals.

AMENDMENTS

1978—Pub. L. 95-598, title II, § 236(b), Nov. 6, 1978, 92 Stat. 2667, added item 1293.

§ 1293. Bankruptcy appeals

(a) The courts of appeals shall have jurisdiction of appeals from all final decisions of panels designated under section 160(a) of this title.

(b) Notwithstanding section 1482 of this title, a court of appeals shall have jurisdiction of an appeal from a final judgment, order, or decree of an appellate panel created under section 160 or a District court of the United States or from a final judgment, order, or decree of a bankruptcy court of the United States if the parties to such appeal agree to a direct appeal to the court of appeals.

(Added Pub. L. 95-598, title II, § 236(a), Nov. 6, 1978, 92 Stat. 2667.)

PRIOR PROVISIONS

A prior section 1293, acts June 25, 1948, ch. 646, 62 Stat. 929; Mar. 18, 1959, Pub. L. 86-3, § 14(b), 73 Stat. 10, providing for appeal from the supreme court of Puerto Rico to the court of appeals for the First Circuit, was repealed by Pub. L. 87-189, § 3, Aug. 30, 1961, 75 Stat. 417, and is now covered by section 1258 of this title.

EFFECTIVE DATE

Section effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1294. Circuits in which decisions reviewable

Appeals from reviewable decisions of the district, bankruptcy, and territorial courts shall be taken to the courts of appeals as follows:

(1) From a district court of the United States to the court of appeals for the circuit embracing the district;

(2) From the United States District Court for the District of the Canal Zone, to the Court of Appeals for the Fifth Circuit;

(3) From the District Court of the Virgin Islands, to the Court of Appeals for the Third Circuit;

(4) From the District Court of Guam, to the Court of Appeals for the Ninth Circuit;

(5) From a panel designated under section 160(a) of this title to the court of appeals for the circuit in which the panel was so designated;

(6) From a bankruptcy court of the United States to the court of appeals for the circuit embracing the district in which the bankruptcy court is located.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 237, 92 Stat. 2667.)

AMENDMENTS

1978—Pub. L. 95-598 added reference to bankruptcy courts in the provisions preceding par. (1) and added pars. (5) and (6).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 85—DISTRICT COURTS; JURISDICTION

Sec.
1334. Bankruptcy appeals.
1337. Commerce and antitrust regulations; amount in controversy, costs.
1351. Consuls, vice consuls, and members of a diplomatic mission as defendant.
1363. Jurors' employment rights.
1364. Direct actions against insurers of members of diplomatic missions and their families.
1364. Senate actions.
1364. Construction of references to laws of the United States or Acts of Congress.

AMENDMENTS

1978—Pub. L. 95-598, title II, § 238(b), Nov. 6, 1978, 92 Stat. 2668, substituted "Bankruptcy appeals" for "Bankruptcy matters and proceedings" in item 1334.

Pub. L. 95-572, § 6(b)(2), Nov. 2, 1978, 92 Stat. 2457, added item 1363 and redesignated former item 1363, which read "Construction of references to laws of the United States or Acts of Congress", as 1364.

Pub. L. 95-521, title VII, § 705(f)(2), Oct. 26, 1978, 92 Stat. 1880, added item 1364, reading "Senate actions".

Pub. L. 95-486, § 9(c), Oct. 20, 1978, 92 Stat. 1634, substituted "Commerce and antitrust regulations; amount in controversy, costs" for "Commerce and antitrust regulations" in item 1337.

Pub. L. 95-393, §§ 7(b), 8(a)(2), Sept. 30, 1978, 92 Stat. 810, substituted "Consuls, vice consuls, and members of a diplomatic mission as defendant" for "Consuls and vice consuls as defendants" in item 1351 and added item 1364 reading "Direct actions against insurers of members of diplomatic missions and their families".

§ 1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter

in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

[*See main edition for text of subsec. (b); credits*]

CODIFICATION

Subsec. (a) is set out in this supplement to correct typographical error appearing in the main edition.

§ 1334. Bankruptcy appeals

(a) The district courts for districts for which panels have not been ordered appointed under section 160 of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.

(b) The district courts for such districts shall have jurisdiction of appeals from interlocutory orders and decrees of bankruptcy courts, but only by leave of the district court to which the appeal is taken.

(c) A district court may not refer an appeal under that section to a magistrate or to a special master.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 238(a), 92 Stat. 2667.)

AMENDMENTS

1978—Pub. L. 95-598 substituted "Bankruptcy appeals" for "Bankruptcy matters and proceedings" as the section catchline and substituted subsecs. (a), (b), and (c) for former undesignated provisions comprising the section which had provided that the district courts had original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1408 of this title.

§ 1337. Commerce and antitrust regulations; amount in controversy, costs

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided, however,* That the district courts shall have original jurisdiction of an action brought under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319), only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where a plaintiff who files the case under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319), originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(As amended Oct. 20, 1978, Pub. L. 95-486, § 9(a), 92 Stat. 1633.)

CODIFICATION

The Interstate Commerce Act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49, Transportation. Sections 20(11) and 219 of the Act are restated in pertinent part in section 11707 of Title 49. For complete distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-486 designated existing provisions as subsec. (a) and, as so designated, added proviso giving the district courts original jurisdiction of actions brought under sections 20(11) and 319 of Title 49, Transportation, when the amounts in controversy for each receipt exceed $10,000, exclusive of interests and costs.

Subsec. (b). Pub. L. 95-486 added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 sections 607, 609.

§ 1341. Taxes by States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 11503.

§ 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be

considered to be a statute of the District of Columbia.

(As amended Dec. 29, 1979, Pub. L. 96-170, § 2, 93 Stat. 1284.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-170, § 2(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 96-170, § 2(2), added subsec. (b).

EFFECTIVE DATE OF 1979 AMENDMENT

Section 3 of Pub. L. 96-170 provided that: "The amendments made by this Act [amending this section and section 1983 of Title 42, The Public Health and Welfare] shall apply with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after the date of the enactment of this Act [Dec. 29, 1979]."

§ 1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

[*See main edition for text of (1)*]

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

[*See main edition for text of (b) to (f)*]

(As amended Nov. 1, 1978, Pub. L. 95-563, § 14(a), 92 Stat. 2389.)

REFERENCES IN TEXT

Sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978, referred to in subsec. (a)(2), are sections 8(g)(1) and 10(a)(1) of Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2387, 2388, which are classified to sections 607(g)(1) and 609(a)(1) of Title 41, Public Contracts.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-563 excluded from the jurisdiction of district courts civil actions or claims against the United States founded upon any express or implied contract with the United States or for damages in cases not sounding in tort subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-563 effective with respect to contracts entered into 120 days after Nov. 1, 1978 and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95-563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1402, 1504, 2402, 2409a, 2411, 2671, 2676, 2677, 2678, 2679, 2680 of this title; title 2 section 190g; title 5 sections 3373, 3374; title 10 section 1089; title 20 section 1105; title 22 sections 817, 3761; title 25 section 640d-17; title 26 section 7422; title 29 section 938; title 38 sections 351, 4116; title 41 section 602; title 42 sections 233, 405, 2221, 2223, 2458a, 4654, 5055; title 46 section 1242; title 47 section 606; title 49 section 1540; title 50 App. sections 9, 2410.

§ 1351. Consuls, vice consuls, and members of a diplomatic mission as defendant

The district courts shall have original jurisdiction, exclusive of the courts of the States, of all civil actions and proceedings against—

(1) consuls or vice consuls of foreign states; or

(2) members of a mission or members of their families (as such terms are defined in section 2 of the Diplomatic Relations Act).

(As amended Sept. 30, 1978, Pub. L. 95-393, § 8(a)(1), 92 Stat. 810.)

REFERENCES IN TEXT

Section 2 of the Diplomatic Relations Act, referred to in clause (2), is section 2 of Pub. L. 95-393, Sept. 30, 1978, 92 Stat. 808, which is classified to section 254a of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1978—Pub. L. 95-393 substituted "Consuls, vice consuls, and members of a diplomatic mission as defendant" for "Consuls and vice consuls as defendants" in section catchline, designated existing provisions as the introductory provision preceding par. (1), and in such introductory provision as so designated, substituted "civil actions and proceedings against—" for "actions and proceedings against consuls or vice consuls of foreign states", and added pars. (1) and (2).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-393 effective at the end of the ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95-393, set out as an Effective Date note under section 254a of Title 22, Foreign Relations and Intercourse.

§ 1358. Eminent domain

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 79c; title 50 section 167f.

§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and

effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	*Indian country affected*
Alaska	All Indian country within the State.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

[*See main edition for text of (b) and (c)*]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 239, 92 Stat. 2668.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-598 substituted "within the State" for "within the Territory" in the item relating to Alaska.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 sections 711e, 1300f, 1323, 1918.

§ 1361. Action to compel an officer of the United States to perform his duty

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 923; title 42 sections 300j-9, 5851, 7622.

§ 1363. Jurors' employment rights

The district courts shall have original jurisdiction of any civil action brought for the protection of jurors' employment under section 1875 of this title.

(Added Pub. L. 95-572, § 6(b)(1), Nov. 2, 1978, 92 Stat. 2457.)

PRIOR PROVISIONS

A prior section 1363, added Pub. L. 91-358, title I, § 172(c)(1), July 29, 1970, 84 Stat. 590, relating to construction of references to laws of the United States or Acts of Congress, was renumbered section 1364.

EFFECTIVE DATE

Section 7 of Pub. L. 95-572 provided that:

"(a) Except as provided in subsection (b) of this section, the amendments made by this Act [enacting sections 1363 and 1875, renumbering section 1363, relating to construction of references to laws of the United States or Acts of Congress, as section 1364, and amending sections 1863, 1865, 1866, 1869, and 1871 of this title] shall apply with respect to any grand or petit juror summoned for service or actually serving on or after the date of enactment of this Act [Nov. 2, 1978].

"(b) The amendment made by section 5 of this Act [to section 1871 of this title] shall apply with respect to any grand or petit juror serving on or after the sixtieth day following the date of enactment of this Act [Nov. 2, 1978]."

§ 1364. Direct actions against insurers of members of diplomatic missions and their families

(a) The district courts shall have original and exclusive jurisdiction, without regard to the amount in controversy, of any civil action commenced by any person against an insurer who by contract has insured an individual, who is a member of a mission (as defined in the Vienna Convention on Diplomatic Relations) or a member of the family of such a member of a mission, or an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, against liability for personal injury, death, or damage to property.

(b) Any direct action brought against an insurer under subsection (a) shall be tried without a jury, but shall not be subject to the defense that the insured is immune from suit, that the insured is an indispensable party, or in the absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was cancelled before the claim arose.

(Added Pub. L. 95-393, § 7(a), Sept. 30, 1978, 92 Stat. 809.)

CODIFICATION

Two other sections 1364 are set out following this section.

EFFECTIVE DATE

Section effective at the end of the ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95-393, set out as an Effective Date note under section 254a of Title 22, Foreign Relations and Intercourse.

§ 1364. Senate actions

(a) The United States District Court for the District of Columbia shall have original jurisdiction, without regard to the amount in controversy, over any civil action brought by the Senate or any authorized committee or subcommittee of the Senate to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal or failure to comply with, any subpena or order issued by the Senate or committee or subcommittee of the Senate to any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof. This section shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpena or order issued to an officer or employee of the Federal Government acting within his official capacity.

(b) Upon application by the Senate or any authorized committee or subcommittee of the Senate, the district court shall issue an order to an entity or person refusing, or failing to comply with, or threatening to refuse or not to comply with, a subpena or order of the Senate or committee or subcommittee of the Senate requiring such entity or person to comply forthwith. Any refusal or failure to obey a lawful

order of the district court issued pursuant to this section may be held by such court to be a contempt thereof. A contempt proceeding shall be commenced by an order to show cause before the court why the entity or person refusing or failing to obey the court order should not be held in contempt of court. Such contempt proceeding shall be tried by the court and shall be summary in manner. The purpose of sanctions imposed as a result of such contempt proceeding shall be to compel obedience to the order of the court. Process in any such action or contempt proceeding may be served in any judicial district wherein the entity or party refusing, or failing to comply, or threatening to refuse or not to comply, resides, transacts business, or may be found, and subpenas for witnesses who are required to attend such proceeding may run into any other district. Nothing in this section shall confer upon such court jurisdiction to affect by injunction or otherwise the issuance or effect of any subpena or order of the Senate or any committee or subcommittee of the Senate or to review, modify, suspend, terminate, or set aside any such subpena or order. An action, contempt proceeding, or sanction brought or imposed pursuant to this section shall not abate upon adjournment sine die by the Senate at the end of a Congress if the Senate or the committee or subcommittee of the Senate which issued the subpena or order certifies to the court that it maintains its interest in securing the documents, answers, or testimony during such adjournment.

(c) In any civil action or contempt proceeding brought pursuant to this section, the court shall assign the action or proceeding for hearing at the earliest practicable date and cause the action or proceeding in every way to be expedited. Any appeal or petition for review from any order or judgment in such action or proceeding shall be expedited in the same manner.

(d) The Senate or any committee or subcommittee of the Senate commencing and prosecuting a civil action or contempt proceeding under this section may be represented in such action by such attorneys as the Senate may designate.

(e) A civil action commenced or prosecuted under this section, may not be authorized pursuant to the Standing Order of the Senate "authorizing suits by Senate Committees" (S. Jour. 572, May 28, 1928).

(f) For the purposes of this section the term "committee" includes standing, select, or special committees of the Senate established by law or resolution.

(Added Pub. L. 95-521, title VII, § 705(f)(1), Oct. 26, 1978, 92 Stat. 1879.)

CODIFICATION

Two other sections 1364 are set out in this chapter, one preceding and one following this section.

EFFECTIVE DATE

Section effective Jan. 3, 1979, see section 717 of Pub. L. 95-521, set out as an Effective Date note under section 288 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 288d of title 2.

§ 1364. Construction of references to laws of the United States or Acts of Congress

For the purposes of this chapter, references to laws of the United States or Acts of Congress do not include laws applicable exclusively to the District of Columbia.

(Added Pub. L. 91-358, title I, § 172(c)(1), July 29, 1970, 84 Stat. 590, § 1363, renumbered § 1364, Pub. L. 95-572, § 6(b)(1), Nov. 2, 1978, 92 Stat. 2456.)

CODIFICATION

Two other sections 1364 are set out preceding this section.

CHAPTER 87—DISTRICT COURTS; VENUE

Sec.
1408. Bankruptcy appeals.

AMENDMENTS

1978—Pub. L. 95-598, title II, § 240(b), Nov. 6, 1978, 92 Stat. 2668, added item 1408.

§ 1403. Eminent domain

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 79c; title 42 section 2222; title 50 section 167f.

§ 1407. Multidistrict litigation

RULES OF PROCEDURE OF THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

EFFECTIVE AUGUST 1, 1978

Rule
1. Definitions.
2. Place of Keeping Records and Files.
3. Admission to Practice Before the Panel and Representation in Transferred Actions.
4. Place and Manner of Filing of Papers.
5. Service of Papers Filed.
6. Form of Papers Filed.
7. Motion Practice.
8. Show Cause Orders.
9. Conditional Transfer Orders for "Tag-Along Actions".
10. Miscellaneous Provisions Concerning "Tag-Along Actions".
11. Termination and Remand.
12. Applications for Extensions of Time.
13. Hearings.
14. Matters Submitted on the Briefs.
15. Failure to Comply with Rules.
16. Effect of the Pendency of an Action Before the Panel.
17. Transfer of Files.
18. Practice.

Rule 1. Definitions

As used in these Rules "Panel" means the members of the Judicial Panel on Multidistrict Litigation appointed by the Chief Justice of the United States pursuant to Section 1407, Title 28, United States Code.

"Clerk" means the official appointed by the Panel to act as Clerk of the Panel and shall include those deputized by the Clerk to perform or assist in the performance of the duties of the Clerk of the Panel.

"Chairman" means the Chairman of the Judicial Panel on Multidistrict Litigation appointed

by the Chief Justice of the United States pursuant to Section 1407, or the member of the Panel designated by the Panel to act as Chairman in the absence or inability of the appointed Chairman.

A "tag-along action" refers to a civil action involving common questions of fact with actions previously transferred under Section 1407.

Rule 2. Place of Keeping Records and Files

The records and files of the Panel shall be kept by the Clerk of the Panel at the offices of the Panel. Records and files may be temporarily or permanently removed to such places at such times as the Panel or the Chairman of the Panel shall direct. The Clerk of the Panel may release records and files for a limited time for the purpose of duplicating. Records and files may be transferred to the Federal Records Center at such times as the Panel shall direct.

Rule 3. Admission to Practice Before the Panel and Representation in Transferred Actions

Every member in good standing of the Bar of any district court of the United States is entitled without condition to practice before the Judicial Panel on Multidistrict Litigation. Any attorney of record in any action transferred under Section 1407 may continue to represent his client in any district court of the United States to which such action is transferred. Parties to any action transferred under Section 1407 are not required to obtain local counsel in the district to which such action is transferred.

Rule 4. Place and Manner of Filing of Papers

(a) All papers for consideration by the Panel shall be submitted for filing to the Clerk of the Panel by mailing or delivering to:

Clerk of the Panel
Judicial Panel on Multidistrict Litigation
1030 15th Street, N. W.
320 Executive Building
Washington, D. C. 20005

No papers shall be left with or mailed to a Judge of the Panel.

(b) An original and eleven copies of each paper, other than an application for extension of time, a proof of service or a notice of opposition pursuant to Rules 9 and 11 of these Rules, shall be submitted for filing to the Clerk of the Panel. The Clerk of the Panel may require that additional copies also be submitted for filing.

(c) When papers are submitted for filing in compliance with the provisions of these Rules, the Clerk of the Panel shall endorse thereon the date of filing.

(d) Copies of motions for transfer of an action or actions pursuant to 28 U.S.C. § 1407 shall be filed in each district court in which an action is pending that will be affected by the motion. Copies of a motion for remand pursuant to 28 U.S.C. § 1407 shall be filed in the district court in which any action affected by the motion is pending.

Rule 5. Service of Papers Filed

(a) All papers filed with the Clerk of the Panel shall be accompanied by proof of service on all other parties in all actions involved in the litigation. Service and proof of service shall be made as provided in Rules 5 and 6 of the Federal Rules of Civil Procedure. The proof of service shall indicate the name and address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and his last known address. The original proof of service shall be filed with the Clerk of the Panel and copies thereof shall be sent to each person included within the proof of service.

(b) The proof of service pertaining to motions for the transfer of actions pursuant to 28 U.S.C. § 1407 shall certify that copies of the motions have been mailed or otherwise delivered for filing to the clerk of each district court in which an action is pending that will be affected by the motion. The proof of service pertaining to a motion for remand pursuant to 28 U.S.C. § 1407 shall certify that a copy of the motion has been mailed or otherwise delivered for filing to the clerk of the district court in which any action affected by the motion is pending.

(c) Within ten days of filing of a motion to transfer, an order to show cause or a conditional transfer order, each party or designated attorney shall notify the Clerk of the Panel, in writing, of the name and address of the attorney designated to receive service of all pleadings, notices, orders and other papers relating to practice before the Judicial Panel on Multidistrict Litigation. Only one attorney shall be designated for each party. Any party not represented by counsel shall be served by mailing such pleadings to that party's last known address. Requests for an extension of time to file the designation of attorney shall not be granted except in extraordinary circumstances.

(d) In order to facilitate compliance with subsection (a) of this Rule, the Clerk of the Panel shall prepare and serve on all counsel and parties not represented by counsel a "Panel Service List" containing the names and addresses of the designated attorneys and the party or parties they represent and the names and addresses of the parties not represented by counsel.

(e) If following transfer of any group of multidistrict litigation, the transferee court appoints liaison counsel, this Rule shall be satisfied by serving each party in each affected action and all liaison counsel. Liaison counsel designated by the transferee court shall receive copies of all Panel orders concerning their particular litigation and shall be responsible for distribution to the parties for whom he or she serves as liaison counsel.

Rule 6. Form of Papers Filed

(a) Averments in any motion seeking action by the Panel shall be made in numbered paragraphs, each of which shall be limited, as far as practicable, to a statement of a single factual averment.

(b) Responses to averments in motions shall be made in numbered paragraphs, each of which shall correspond to the number of the paragraph of the motion to which the responsive paragraph is directed. Each responsive paragraph shall admit or deny wholly or in part

the averment of the motion, and shall contain the respondent's version of the subject matter when the averment or the motion is not wholly admitted.

(c) Each document filed shall be

(i) flat and unfolded;

(ii) plainly written, typed in double space, printed or prepared by means of a duplicating process, without erasures or interlineations which materially deface it;

(iii) on opaque, unglazed, white paper (not onionskin);

(iv) approximately 8½ × 11 inches in size; and

(v) secured on the left margin.

(d) Each document shall bear the identification "MDL Docket No. ——" and the appropriate descriptive title of the litigation involved.

(e) The title on the first page of each document shall commence not less than three inches from the top of the page.

(f) The final page of each document shall contain the name, address and telephone number of the attorney in active charge of the case.

(g) Except with the approval of the Panel, each brief submitted for filing with the Panel shall be limited to twenty pages, exclusive of exhibits.

Rule 7. Motion Practice

(a) All requests for action by the Panel shall be made by written motion. Every motion shall be accompanied by:

(i) a brief in support thereof in which the background of the litigation and the factual and legal contentions of the movant shall be concisely stated in separate portions of the brief with citation of applicable authorities; and

(ii) a schedule giving

(A) the complete name of each action involved;

(B) the district court in which each action is pending;

(C) the civil action number of each action; and

(D) the name of the judge assigned each action, if known.

(b) Within fifteen days after filing of a motion, all other parties shall file a response thereto. Failure of a party to respond to a motion shall be treated as that party's acquiescence to the action requested in the motion.

(c) The movant may, within five days after the lapse of the time period for filing responsive briefs, file a single brief in reply to any opposition.

(d) Motions, responses, and replies shall also be governed by Rules 4, 5 and 6 of these Rules.

(e) With respect to any action that is the subject of Panel consideration, counsel shall notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

Rule 8. Show Cause Orders

(a) When transfer of multidistrict litigation is being considered on the initiative of the Panel pursuant to 28 U.S.C. § 1407(c)(i), an order shall be filed by the Clerk of the Panel directing the parties to show cause why the action or actions should not be transferred for coordinated or consolidated pretrial proceedings. The common party or parties in such actions shall notify the Clerk of the Panel of any other federal district court actions related to the litigation encompassed by the show cause order. This notification shall include not only additional actions pending at the time of the issuance of the show cause order but also all future-filed related federal actions.

(b) Any party may file a response to the show cause order within fifteen days of the filing of said order unless otherwise provided for in the order. Failure of a party to respond to a show cause order shall be treated as that party's acquiescence to the Panel action contemplated in the order.

(c) Within five days after the lapse of the time period for filing a response, any party may file a reply limited to new matters.

(d) Responses and replies shall be filed and served in conformity with Rules 4, 5 and 6 of these Rules.

(e) With respect to any action that is the subject of Panel consideration, counsel shall notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

Rule 9. Conditional Transfer Orders for "Tag-Along Actions"

(a) Upon learning of the pendency of a potential "tag-along action," an order may be entered by the Clerk of the Panel transferring that action to the previously designated transferee court on the basis of the prior hearing or hearings and for the reasons expressed in previous opinions and orders of the Panel in the litigation. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose transfer, shall not send the order to the clerk of the transferee court for fifteen days from the entry thereof.

(b) Any party opposing the transfer shall file a Notice of Opposition with the Clerk of the Panel within the fifteen-day period. If a Notice of Opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee court until further order of the Panel.

(c) Within fifteen days of the filing of its Notice of Opposition, the party opposing transfer shall file a motion to vacate the conditional transfer order and brief in support thereof. The Clerk of the Panel shall set the motion for hearing at the next appropriate session of the Panel. Failure to file and serve a motion and brief shall be treated as withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee court.

(d) Conditional transfer orders do not become effective unless and until they are filed with the clerk of the transferee court.

(e) Notices of opposition and motions to vacate orders of the Panel and responses thereto shall be governed by Rules 4, 5, 6 and 7 of these Rules.

Rule 10. Miscellaneous Provisions Concerning "Tag-Along Actions"

(a) Potential "tag-along actions" filed in the transferee district require no action on the part of the Panel and requests for assignment of such actions to the Section 1407 transferee judge should be made in accordance with local rules for the assignment of related actions.

(b) Upon learning of the pendency of a potential "tag-along action" and having reasonable anticipation of opposition to transfer of that action, the Panel may direct the Clerk of the Panel to file a show cause order, in accordance with Rule 8 of these Rules, instead of a conditional transfer order.

(c) Failure to serve one or more of the defendants in a potential "tag-along action" with the complaint and summons as required by Rule 4 of the Federal Rules of Civil Procedure does not preclude transfer of such action under Section 1407. Such failure, however, may be submitted by such a defendant as a basis for opposing the proposed transfer. The inability of the Clerk of the Panel to serve a conditional transfer order on all defendants or their counsel shall not render the transfer of the action void but can be submitted by such a defendant as a basis for moving to remand as to such defendant.

(d) A civil action apparently involving common questions of fact with actions under consideration by the Panel for transfer under Section 1407, which was filed or came to the attention of the Panel either after the initial hearing before it or too late to be included in the initial hearing, will be treated by the Panel as a potential "tag-along action."

(e) Any party in actions previously transferred under Section 1407 or under consideration by the Panel for transfer under Section 1407 shall notify the Clerk of the Panel of any potential "tag-along actions" in which that party is also named.

Rule 11. Termination and Remand

In the absence of unusual circumstances—

(a) Actions terminated in the transferee court by valid judgment, including but not limited to summary judgment, judgment of dismissal and judgment upon stipulation, shall not be remanded by the Panel and shall be dismissed by the transferee court. The clerk of the transferee court shall send a copy of the order terminating the action to the Clerk of the Panel but shall retain the original files and records unless otherwise directed by the transferee judge or by the Panel.

(b) Each transferred action that has not been terminated in the transferee court shall be remanded by the Panel to the transferor district for trial, unless ordered transferred by the transferee judge to the transferee or other district under 28 U.S.C. § 1404(a) or 28 U.S.C. § 1406. In the event that the transferee judge transfers an action under 28 U.S.C. §§ 1404(a) or 1406, no further action of the Panel shall be necessary to authorize further proceedings including trial.

(c) The Panel shall consider remand of each transferred action or any separable claim, cross-claim or third-party claim at or before the conclusion of coordinated or consolidated pretrial proceedings on

(i) motion of any party,

(ii) suggestion of the transferee court, or

(iii) the Panel's own initiative, by entry of an order to show cause, a conditional remand order or other appropriate order.

(d) If remand is sought by motion of a party, the motion shall be accompanied by:

(i) an affidavit reciting that all common discovery and other pretrial proceedings have been completed in the action sought to be remanded and that all orders of the transferee court have been satisfactorily complied with or that remand is otherwise appropriate; and

(ii) a copy of the transferee court's final pretrial order, where such order has been entered.

Motions to remand and responses thereto shall be governed by Rules 4, 5, 6 and 7 of these Rules.

(e) When an order to show cause why an action or actions should not be remanded is entered pursuant to subsection (c), paragraph (iii) of this Rule, any party may file a response within fifteen days of the filing of said order unless otherwise provided for in the order. Within five days of filing of a party's response, any party may file a reply brief limited to new matters. Failure of a party to respond to a show cause order regarding remand shall be treated as that party's acquiescence to the remand. Responses and replies shall be filed and served in conformity with Rules 4, 5 and 6 of these Rules.

(f) Conditional Remand Orders

(i) When the Panel has been advised by the transferee judge, or otherwise has reason to believe, that pretrial proceedings in the litigation assigned to the transferee judge are concluded or that remand of an action or actions is otherwise appropriate, an order may be entered by the Clerk of the Panel remanding the action or actions to the transferor court. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose remand, shall not send the order to the clerk of the transferee court for fifteen days from the entry thereof.

(ii) Any party opposing the remand shall file a Notice of Opposition with the Clerk of the Panel within the fifteen-day period. If a Notice of Opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee court until further order of the Panel.

(iii) Within fifteen days of the filing of its Notice of Opposition, the party opposing remand shall file a motion to vacate the conditional remand order and brief in support thereof. The Clerk of the Panel shall set the motion for hearing at the next appropriate session of the Panel. Failure to file and serve a motion and brief shall be treated as a withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee court.

(iv) Conditional remand orders do not become effective unless and until they are filed with the clerk of the transferee court.

(v) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 4, 5, 6 and 7 of these Rules.

(g) Upon receipt of an order to remand from the Clerk of the Panel, the parties shall furnish forthwith to the transferee clerk a stipulation or designation of the contents of the record or part thereof to be remanded and furnish the transferee clerk all necessary copies of any pleading or other matter filed so as to enable the transferee clerk to comply with the order of remand.

Rule 12. Applications for Extensions of Time

Any application for an extension of time to file a pleading or perform an act required by these Rules may be acted upon by the Clerk of the Panel. Such applications will be evaluated in relation to the impact on the Panel's calendar as well as on the basis of the reasons set forth in support of the applications. Any party aggrieved by the Clerk's action on such application may submit its objections to the Panel for consideration.

Rule 13. Hearings

(a) Hearings shall be held as ordered by the Panel. The Panel shall convene whenever and wherever desirable or necessary in the judgment of the Chairman. The Chairman shall determine which matters shall be set for hearing at each session and the Clerk of the Panel shall give notice to counsel for all parties involved in the litigation of the time, place and subject matter of such hearing.

(b) No transfer or remand determination regarding any action shall be made by the Panel when any party timely opposes such transfer or remand unless a hearing has been held or unless the matter has been submitted on the briefs in accordance with Rule 14 of these Rules. Unless otherwise ordered by the Panel, all other matters before the Panel shall be considered and determined upon the basis of the papers filed.

(c) Except for leave of the Panel on a showing of good cause, only those parties who have filed a motion or written response to a motion or order shall be permitted to appear before the Panel and present argument.

(d) Counsel for those supporting transfer or remand under Section 1407 and counsel for those opposing such transfer or remand are to confer separately prior to the hearing for the purpose of organizing their arguments and selecting spokesmen to present all views without duplication. Counsel who intend to argue at a Panel hearing shall so notify the Clerk of the Panel in writing at such time in advance of the date of the hearing as required by the Clerk of the Panel in the Notice of Hearing.

(e) Unless otherwise ordered by the Panel, a maximum of one hour shall be allotted for argument in each new group of actions being considered for Section 1407 treatment and a maximum of one-half hour shall be allotted for arguments in all other matters. The time shall be divided equally among those with varying viewpoints. Counsel for the moving party or parties shall generally be heard first.

(f) So far as practicable and consistent with the purposes of Section 1407, the offering of oral testimony before the Panel shall be avoided. Accordingly, oral testimony shall not be received except upon notice, motion and order of the Panel expressly providing for it. Proof may be submitted as provided in the Federal Rules of Civil Procedure.

(g) After an action or group of actions has been set for hearing, it may only be continued by order of the Panel on good cause shown.

Rule 14. Matters Submitted on the Briefs

When the Panel has set a matter for hearing and a party intends to waive oral argument, it must communicate this fact, in writing, to the Clerk of the Panel in advance of the date of hearing. If all parties to the matter to be heard waive oral argument, the matter shall be submitted for decision by the Panel on the basis of the papers filed. If a party is not present when a matter to be heard is called at the hearing, the matter shall not be rescheduled and that party's position shall be treated as submitted for decision by the Panel on the basis of the papers filed, unless otherwise ordered by the Panel.

Rule 15. Failure to Comply with Rules

The Clerk of the Panel may, when a paper submitted for filing is not in compliance with the provisions of these Rules, refuse to file such paper until full compliance is accomplished.

Rule 16. Effect of the Pendency of an Action Before the Panel

The pendency of a motion, order to show cause, conditional transfer order or conditional remand order before the Panel concerning transfer or remand of an action pursuant to 28 U.S.C. § 1407 does not affect or suspend orders and pretrial proceedings in the district court in which the action is pending and does not in any way limit the pretrial jurisdiction of that court. A transfer or remand shall be effective when the transfer or remand order is filed in the office of the clerk of the district court of the transferee district.

Rule 17. Transfer of Files

(a) Upon receipt of a certified copy of a transfer order from the clerk of the transferee court, the clerk of the transferor court shall forward to the clerk of the transferee court the complete original file and a certified copy of the docket sheet for each transferred action.

(b) If an appeal is pending, or a notice of appeal has been filed, or leave to appeal has been sought under 28 U.S.C. § 1292(b) or a petition for an extraordinary writ is pending, in any action included in an order of transfer, and the original file or parts thereof have been forwarded to the court of appeals, the clerk of the transferor court shall notify the clerk of the court of appeals of the order of transfer and

secure the original file long enough to prepare and transmit to the clerk of the transferee court a certified copy of all papers contained in the original file and a certified copy of the docket sheet.

(c) If the transfer order provides for the separation and simultaneous remand of any claim, cross-claim, counterclaim, or third-party claim, the clerk of the transferor court shall retain the original file and shall prepare and transmit to the clerk of the transferee court a certified copy of the docket sheet and copies of all papers except those relating exclusively to separated and remanded claims.

(d) Upon receipt of an order to remand from the Clerk of the Panel, the transferee court shall prepare and send to the clerk of the transferor court the following:

(i) a certified copy of the individual docket sheet for each action being remanded;

(ii) a certified copy of the master docket sheet, if applicable;

(iii) the entire file for each action being remanded;

(iv) a certified copy of the final pretrial order, if applicable; and

(v) a "record on remand" to be composed of those parts of the files and records produced during coordinated or consolidated pretrial proceedings which have been stipulated to or designated by counsel as being necessary for any or all proceedings to be conducted following remand. It shall be the responsibility of counsel originally preparing or filing any document to be included in the "record on remand" to furnish on request sufficient copies to the clerk of the transferee court.

(e) The Clerk of the Panel shall be notified when any files have been transmitted pursuant to this Rule.

Rule 18. Practice

Where not fixed by statute or rule, the practice shall be that heretofore customarily followed by the Panel.

§ 1408. Bankruptcy appeals

An appeal under section 1334 of this title from a judgment, order, or decree of a bankruptcy court may be brought only in the judicial district in which such bankruptcy court is located.

(Added Pub. L. 95–598, title II, § 240(a), Nov. 6, 1978, 92 Stat. 2668.)

EFFECTIVE DATE

Section effective Apr. 1, 1984, see section 402(b) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 section 1323; title 39 section 409; title 42 section 7192.

§ 1441. Actions removable generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1332 of this title; title 33 section 1323.

§ 1445. Nonremovable actions

[*See main edition for text of* (a)]

(b) A civil action in any State court against a common carrier or its receivers or trustees to recover damages for delay, loss, or injury of shipments, arising under section 11707 of title 49, may not be removed to any district court of the United States unless the matter in controversy exceeds $10,000, exclusive of interest and costs.

[*See main edition for text of* (c)]

(As amended Oct. 17, 1978, Pub. L. 95–473, § 2(a)(3)(A), 92 Stat. 1465; Oct. 20, 1978, Pub. L. 95–486, § 9(b), 92 Stat. 1634.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–486 substituted "$10,000" for "$3,000".

Pub. L. 95–473 substituted "section 11707 of title 49" for "section 20 of Title 49".

§ 1446. Procedure for removal

[*See main edition for text of* (a) *and* (b)]

(c)(1) A petition for removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the petitioner leave to file the petition at a later time.

(2) A petition for removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the petition shall constitute a waiver of such grounds, and a second petition may be filed only on grounds not existing at the time of the original petition. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a petition for removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the petition is first denied.

(4) The United States district court to which such petition is directed shall examine the petition promptly. If it clearly appears on the face of the petition and any exhibits annexed thereto that the petition for removal should not be granted, the court shall make an order for its summary dismissal.

(5) If the United States district court does not order the summary dismissal of such petition, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the petition as justice shall require. If the United States district court determines that such petition shall be granted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

[*See main edition for text of* (d)]

(e) Promptly after the filing of such petition for the removal of a civil action and bond the

defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

[See main edition for text of (f)]

(As amended July 30, 1977, Pub. L. 95-78, § 3, 91 Stat. 321.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-78, § 3(a), designated existing provisions as par. (1), set a period of 30 days as the maximum allowable time prior to commencement of trial and following arraignment during which time a petition for removal can be filed, provided for the grant of additional time for good cause shown, and added pars. (2) to (5).

Subsec. (e). Pub. L. 95-78, § 3(b), inserted "for the removal of a civil action" following "filing of such petition".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-78 effective Oct. 1, 1977, see section 4 of Pub. L. 95-78, set out as an Effective Date of Pub. L. 95-78 note under section 3771 of Title 18, Crimes and Criminal Procedure.

CHAPTER 90—DISTRICT COURTS AND BANKRUPTCY COURTS

Sec.
1471. Jurisdiction.
1472. Venue of cases under title 11.
1473. Venue of proceedings arising under or related to cases under title 11.
1474. Venue of cases ancillary to foreign proceedings.
1475. Change of venue.
1476. Creation or alteration of district or division.
1477. Cure or waiver of defects.
1478. Removal to the bankruptcy courts.
1479. Provisional remedies; security.
1480. Jury trials.
1481. Powers of bankruptcy court.
1482. Appeals.

JURISDICTION AND PROCEDURE DURING TRANSITION

Pub. L. 95-598, title IV, § 405, Nov. 6, 1978, 92 Stat. 2685, provided that:

"(a)(1) All cases commenced under title 11 of the United States Code during the transition period shall be referred to the United States bankruptcy judges. The United States bankruptcy judges may exercise in such cases the jurisdiction and powers conferred by subsection (b) of this section on the courts of bankruptcy continued by section 404(a) of this Act [set out in a note preceding section 151 of this title], and all proceedings in such cases shall be before the United States bankruptcy judges, except—

"(A) a proceeding to enjoin a court;

"(B) a proceeding to punish a criminal contempt—

"(i) not committed in the bankruptcy judge's actual presence; or

"(ii) warranting a punishment of imprisonment; or

"(C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge.

"(2) Except as provided in subsection (c) of this section, any proceeding in a court of bankruptcy in a case under title 11 of the United States Code that is not before the United States bankruptcy judge shall be before the judge of the court of bankruptcy for the district in which such case is pending.

"(b) During the transition period, the amendments made by sections 241 [enacting this chapter], 243 [amending section 1869 of this title], 250 [enacting section 2256 of this title], and 252 [amending rule 1101 of the Federal Rules of Evidence] of this Act shall apply to the courts of bankruptcy continued by section 404(a) of this Act [set out in a note preceding section 151 of this title] the same as such amendments apply to the United States bankruptcy courts established under section 201 of this Act [enacting chapter 6 of this title].

"(c)(1) During the transition period, an appeal from a judgment, order, or decree of a United States bankruptcy judge shall be—

"(A) if the circuit council of the circuit in which the bankruptcy judge sits so orders for the district in which the bankruptcy judge sits, then to a panel of three bankruptcy judges appointed in the manner prescribed by section 160 of title 28 of the United States Code, as added by section 201 of this Act;

"(B) if the parties to the appeal agree to a direct appeal to the court of appeals for such circuit, then to such court of appeals; or

"(C) to the district court for the district in which the bankruptcy judge sits.

"(2) During the transition period, the jurisdiction of the district courts, the courts of appeals, and panels of bankruptcy judges to hear appeals shall be the same as the jurisdiction of such courts and panels granted under the amendments made by sections 236 [enacting section 1293 of this title], 237 [amending section 1294 of this title], 238 [amending section 1334 of this title], and 241 [enacting this chapter] of this Act to hear appeals from the judgments, orders, and decrees of the bankruptcy courts established under section 201 of this Act [enacting chapter 6 of this title].

"(d) The rules prescribed under section 2075 of title 28 of the United States Code and in effect on September 30, 1979, shall apply to cases under title 11, to the extent not inconsistent with the amendments made by this Act, or with this Act [see Tables for complete classification of Pub. L. 95-598], until such rules are repealed or superseded by rules prescribed and effective under such section, as amended by section 248 of this Act."

TRANSITION TO NEW COURT SYSTEM

Pub. L. 95-598, title IV, § 409, Nov. 6, 1978, 92 Stat. 2687, provided that:

"(a) On April 1, 1984, there shall be transferred to the appropriate United States bankruptcy court established under section 201 of this Act [enacting chapter 6 of this title]—

"(1) cases, and matters and proceedings in cases, under the Bankruptcy Act [former Title 11, Bankruptcy] that are pending, at the end of September 30, 1983, in the courts of bankruptcy continued under section 404(a) of this Act [set out in a note preceding section 151 of this title], other than cases, and matters and proceedings in cases, under—

"(A) section 77 [section 205 of former Title 11] or chapter IX [section 401 et seq. of former Title 11] of the Bankruptcy Act; or

"(B) chapter X of the Bankruptcy Act [section 501 et seq. of former Title 11] in which a general reference under section 117 of the Bankruptcy Act [section 517 of former Title 11] is not in effect; and

"(2) cases, and proceedings arising under or related to cases, under title 11 of the United States Code that are pending, at the end of March 31, 1984, in the courts of bankruptcy continued under section 404(a) of this Act [set out in a note preceding section 151 of this title].

"(b) Civil actions pending on March 31, 1984, over which a United States bankruptcy court established under section 201 of this Act [enacting chapter 6 of this title] has jurisdiction on April 1, 1984, shall not abate, but continuation of any such action that has not been finally determined before April 1, 1985, may be enjoined, and any claims or causes of actions not resolved may be removed to a bankruptcy court under chapter 90 of title 28 of the United States Code.

"(c) All Government publications, law books, recording equipment, and other property furnished to bank-

ruptcy judges' offices as of March 31, 1984, and of particular use to the offices of the judges of the United States bankruptcy courts, shall be transferred to the United States bankruptcy courts under the supervision of the Director of the Administrative Office of the United States Courts."

ADDITIONAL RULEMAKING POWER

Pub. L. 95-598, title IV, § 410, Nov. 6, 1978, 92 Stat. 2687, provided that:

"The Supreme Court may issue such additional rules of procedure, consistent with Acts of Congress, as may be necessary for the orderly transfer of functions and records and the orderly transition to the new bankruptcy court system created by this Act [see Tables for complete classification]."

§ 1471. Jurisdiction

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

(d) Subsection (b) or (c) of this section does not prevent a district court or a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise.

(e) The bankruptcy court in which a case under title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2668.)

EFFECTIVE DATE

Chapter effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1472. Venue of cases under title 11

Except as provided in section 1474 of this title, a case under title 11 may be commenced in the bankruptcy court for a district—

(1) in which the domicile, residence, principal place of business, in the United States, or principal assets, in the United States, of the person or entity that is the subject of such case have been located for the 180 days immediately preceding such commencement, or for a longer portion of such 180-day period than the domicile, residence, principal place of business, in the United States, or principle[1] assets, in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2669.)

§ 1473. Venue of proceedings arising under or related to cases under title 11

(a) Except as provided in subsections (b) and (d) of this section, a proceeding arising in or related to a case under title 11 may be commenced in the bankruptcy court in which such case is pending.

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $5,000 only in the bankruptcy court for the district in which a defendant resides.

(c) Except as provided in section (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the bankruptcy court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the bankruptcy court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

(e) A proceeding arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the bankruptcy court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the bankruptcy court in which such case in[1] pending.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2669.)

§ 1474. Venue of cases ancillary to foreign proceedings

(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the bankruptcy court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

[1] So in original. Probably should be "principal".

[1] So in original. Probably should be "is".

(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against property, or to require turnover of property of an estate, may be commenced only in the bankruptcy court for the district in which such property is found.

(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the bankruptcy court for the district in which is located the principal assets in the United States, of the estate that is the subject of such case.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2670.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1472 of this title.

§ 1475. Change of venue

A bankruptcy court may transfer a case under title 11 or a proceeding arising under or related to such a case to a bankruptcy court for another district, in the interest of justice and for the convenience of the parties.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2670.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1477 of this title.

§ 1476. Creation or alteration of district or division

Cases or proceedings pending at the time of the creation of a new district or division or transfer of a county or territory from one division or district to another may be tried in the district or division as it existed at the institution of the case or proceeding, or in the district or division so created or to which the county or territory is so transferred as the parties shall agree or the court direct.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2670.)

§ 1477. Cure or waiver of defects

(a) The bankruptcy court of a district in which is filed a case or proceeding laying venue in the wrong division or district may, in the interest of justice and for the convenience of the parties, retain such case or proceeding, or may transfer, under section 1475 of this title, such case or proceeding to any other district or division.

(b) Nothing in this chapter shall impair the jurisdiction of a bankruptcy court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2670.)

§ 1478. Removal to the bankruptcy courts

(a) A party may remove any claim or cause of action in a civil action, other than a proceeding before the United States Tax Court or a civil action by a Government unit to enforce such governmental unit's police or regulatory power, to the bankruptcy court for the district where such civil action is pending, if the bankruptcy courts have jurisdiction over such claim or cause of action.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order under this subsection remanding a claim or cause of action, or a decision not so remanding, is not reviewable by appeal or otherwise.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2670.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1479 of this title.

§ 1479. Provisional remedies; security

(a) Whenever any action is removed to a bankruptcy court under section 1478 of this title, any attachment or sequestration of the goods or estate of the defendant in such action shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the court from which the action was removed, unless the attachment or sequestration is invalidated under applicable law.

(b) Any bond, undertaking, or security given by either party in an action prior to removal under section 1478 of this title shall remain valid and effectual notwithstanding such removal, unless such bond, undertaking, or other security is invalidated under applicable law.

(c) All injunctions, orders, or other proceedings in an action prior to removal of such action under section 1478 of this title shall remain in full force and effect until dissolved or modified by the bankruptcy court.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2670.)

§ 1480. Jury trials

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury, in a case under title 11 or in a proceeding arising under title 11 or arising in or related to a case under title 11, that is provided by any statute in effect on September 30, 1979.

(b) The bankruptcy court may order the issues arising under section 303 of title 11 to be tried without a jury.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2671.)

§ 1481. Powers of bankruptcy court

A bankruptcy court shall have the powers of a court of equity, law, and admiralty, but may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2671.)

§ 1482. Appeals

(a) Panels designated under section 160(a) of this title shall have jurisdiction of appeals from

all final judgments, orders, and decrees of bankruptcy courts.

(b) Panels designated under section 160(a) of this title shall have jurisdiction of appeals from interlocutory judgments, orders, and decrees of bankruptcy courts, but only by leave of the panel to which the appeal is taken.

(Added Pub. L. 95-598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2671.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1293 of this title.

CHAPTER 91—COURT OF CLAIMS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 7703.

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States. To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under the Contract Disputes Act of 1978.

[*See main edition for text of 2d par.*]

(As amended Nov. 1, 1978, Pub. L. 95-563, § 14(i), 92 Stat. 2391.)

REFERENCES IN TEXT

The Contracts Disputes Act of 1978, referred to in text, is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

AMENDMENTS

1978—Pub. L. 95-563 provided that the Court of Claims would have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under the Contract Disputes Act of 1978.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95-563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2409a, 2510 of this title; title 25 section 70a; title 41 section 602; title 42 section 4654; title 46 section 1242; title 47 section 606.

§ 1492. Congressional reference cases

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2509 of this title; title 17 section 502.

§ 1498. Patent and copyright cases

[*See main edition for text of (a)*]

(b) Hereafter, whenever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization or consent of the Government, the exclusive remedy of the owner of such copyright shall be by action against the United States in the Court of Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 504(c) of title 17, United States Code: *Provided,* That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the copyrighted work by the Government: *Provided, however,* That this subsection shall not confer a right of action on any copyright owner or any assignee of such owner with respect to any copyrighted work prepared by a person while in the employment or service of the United States, where the copyrighted work was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further,* That before such action against the United States has been instituted the appropriate corporation owned or controlled by the United States or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner in full settlement and compromise for the damages accruing to him by reason of such infringement and to settle the claim administratively out of available appropriations.

Except as otherwise provided by law, no recovery shall be had for any infringement of a copyright covered by this subsection committed more than three years prior to the filing of the complaint or counterclaim for infringement in the action, except that the period between the date of receipt of a written claim for compensation by the Department or agency of the Gov-

ernment or corporation owned or controlled by the United States, as the case may be, having authority to settle such claim and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as a part of the three years, unless suit is brought before the last-mentioned date.

[*See main edition for text of* (c) *and* (d)]

(As amended Oct. 19, 1976, Pub. L. 94-553, title I, § 105(c), 90 Stat. 2599.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-553 substituted "section 504(c) of title 17" for "section 101(b) of title 17".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of subsec. (b) by Pub. L. 94-553 effective Jan. 1, 1978, see section 102 of Pub. L. 94-553 set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

CHAPTER 93—COURT OF CUSTOMS AND PATENT APPEALS

§ 1541. Appeals from Customs Court decisions

(a) The Court of Customs and Patent Appeals has jurisdiction of appeals from all final judgments or orders of the United States Customs Court, and from any interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or modify an injunction, under section 516A(c)(2) of the Tariff Act of 1930.

[*See main edition for text of* (b)]

(As amended July 26, 1979, Pub. L. 96-39, title X, § 1001(b)(4)(A), 93 Stat. 305.)

REFERENCES IN TEXT

Section 516A(c)(2) of the Tariff Act of 1930, referred to in subsec. (a), is classified to section 1516a(c)(2) of Title 19, Customs Duties.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-39 extended appellate jurisdiction over interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions under section 516A(c)(2) of the Tariff Act of 1930.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on the date on which title VII of the Tariff Act of 1930 takes effect, which title, under section 107 of Pub. L. 96-39, shall take effect on Jan. 1, 1980, with certain conditions, see sections 107 and 1002 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of Title 19, Customs Duties.

§ 1544. Certain findings by Secretary of Commerce

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in text, are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of Title 19, Customs Duties.

CHAPTER 95—CUSTOMS COURT

§ 1582. Jurisdiction of the Customs Court

[*See main edition for text of* (a)]

(b) The Customs Court shall have exclusive jurisdiction of civil actions brought by interested parties under sections 516 and 516A of the Tariff Act of 1930, as amended.

(c) The Customs Court shall not have jurisdiction of an action unless (1) either a protest has been filed, as prescribed by section 514 of the Tariff Act of 1930, as amended, and denied in accordance with the provisions of section 515 of the Tariff Act of 1930, as amended, or if the action relates to a decision under section 516 and 516A of the Tariff Act of 1930, as amended, all remedies prescribed therein have been exhausted, and (2) except in the case of an action relating to a decision under section 516 and 516A of the Tariff Act of 1930, as amended, all liquidated duties, charges or exactions have been paid at the time the action is filed.

[*See main edition for text of* (d)]

(e) The Customs Court shall have exclusive jurisdiction of any civil action brought by a party-at-interest to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979. For purposes of this subsection, the term "party-at-interest" means—

(1) a foreign manufacturer, producer, or exporter, or a United States importer of merchandise which is the subject of a final determination under section 305(b) of the Trade Agreements Act of 1979,

(2) a manufacturer, producer, or wholesaler in the United States of a like product,

(3) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, and

(4) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(f) The Customs Court shall have exclusive jurisdiction of any application for the issuance of a protective order under section 777(c)(2) of the Tariff Act of 1930.

(As amended July 26, 1979, Pub. L. 96-39, title X, § 1001(b)(4)(B), 93 Stat. 305.)

REFERENCES IN TEXT

Section 516A of the Tariff Act of 1930, as amended, referred to in subsecs. (b) and (c), is classified to section 1516a of Title 19, Customs Duties.

Section 305(b)(1) of the Trade Agreements Act of 1979, referred to in subsec. (e), is classified to section 2515(b)(1) of Title 19.

Section 777(c)(2) of the Tariff Act of 1930, referred to in subsec. (f), is classified to section 1677f(c)(2) of Title 19.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-39, § 1001(b)(4)(B)(i), substituted "interested parties under sections 516 and 516A of the Tariff Act of 1930" for "American manufacturers, producers, or wholesalers pursuant to section 516 of the Tariff Act of 1930".

Subsec. (c). Pub. L. 96-39, § 1001(b)(4)(B)(ii), inserted references to section 516A of the Tariff Act of 1930, in two instances.

Subsecs. (e), (f). Pub. L. 96-39, § 1001(b)(4)(B)(iii), added subsecs. (e) and (f).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on the date on which title VII of the Tariff Act of 1930 takes effect, which title, under section 107 of Pub. L. 96-39, shall take effect on Jan. 1, 1980, with certain conditions, see sections 107 and 1002 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of Title 19, Customs Duties.

PART V—PROCEDURE

CHAPTER 111—GENERAL PROVISIONS

§ 1656. Creation of new district or division or transfer of territory; lien enforcement

The creation of a new district or division or the transfer of any territory to another district or division shall not affect or divest any lien theretofore acquired in a district court or in a bankruptcy court upon property within such district, division or territory.

[*See main edition for text of 2d par.*]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 242, 92 Stat. 2671.)

AMENDMENTS

1978—Pub. L. 95-598 added "or in a bankruptcy court" following "a district court".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 119—EVIDENCE; WITNESSES

Sec.
1827. Interpreters in courts of the United States.
1828. Special interpretation services.

AMENDMENTS

1978—Pub. L. 95-539, § 2(b), Oct. 28, 1978, 92 Stat. 2042, added items 1827 and 1828.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 section 503.

§ 1821. Per diem and mileage generally; subsistence

(a)(1) Except as otherwise provided by law, a witness in attendance at any court of the United States, or before a United States Magistrate, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall be paid the fees and allowances provided by this section.

(2) As used in this section, the term "court of the United States" includes, in addition to the courts listed in section 451 of this title, any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

(b) A witness shall be paid an attendance fee of $30 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance.

(c)(1) A witness who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from such witness's residence by the shortest practical route in going to and returning from the place of attendance. Such a witness shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

(2) A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, pursuant to section 5704 of title 5, for official travel of employees of the Federal Government shall be paid to each witness who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniformed table of distances adopted by the Administrator of General Services.

(3) Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt), shall be paid in full to a witness incurring such expenses.

(4) All normal travel expenses within and outside the judicial district shall be taxable as costs pursuant to section 1920 of this title.

(d)(1) A subsistence allowance shall be paid to a witness (other than a witness who is incarcerated) when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day.

(2) A subsistence allowance for a witness shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, pursuant to section 5702(a) of title 5, for official travel in the area of attendance by employees of the Federal Government.

(3) A subsistence allowance for a witness attending in an area designated by the Administrator of General Services as a high-cost area shall be paid in an amount not to exceed the maximum actual subsistence allowance prescribed by the Administrator, pursuant to section 5702(c)(B) of title 5, for official travel in such area by employees of the Federal Government.

(4) When a witness is detained pursuant to section 3149 of title 18 for want of security for his appearance, he shall be entitled for each day of detention when not in attendance at court, in addition to his subsistence, to the daily attendance fee provided by subsection (b) of this section.

(e) An alien who has been paroled into the United States for prosecution, pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined pursuant to section 242(b) of such Act (8 U.S.C. 1252(b)) to be deportable, shall be ineligible to receive the fees or allowances provided by this section.

(As amended Oct. 27, 1978, Pub. L. 95-535, § 1, 92 Stat. 2033.)

AMENDMENTS

1978—Pub. L. 95-535 increased the daily witness attendance fee from $20 to $30, substituted provisions relating to compensation for the actual expenses of travel based on the form of transportation used, to a travel allowance equal to the mileage allowance under section 5704 of Title 5 for a witness travelling by privately owned vehicle, and to tolls, taxi fares, and parking fees for provisions that a witness would receive 10 cents per mile and that mileage computation would be based on a uniform table of distances regardless of the mode of travel employed, provisions relating to a subsistence allowance in amounts not to exceed those which Government employees receive for official travel for provisions that such subsistence allowance would be $16 per day, provisions relating to a witness detained for want of security for his appearance being entitled to the daily attendance fee in addition to subsistence for provisions that such a witness would be entitled to $1 per day in addition to his subsistence, and added provisions defining "court of the United States" and relating to travel expenses being taxable as costs and to certain aliens being ineligible to receive fees and allowances.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2 of Pub. L. 95-535 provided that: "The amendments made by this Act [amending this section] shall take effect on October 1, 1978, or on the date of enactment [Oct. 27, 1978], whichever occurs later."

§ 1827. Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in courts of the United States.

(b) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.

(c) Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.

(d) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, in any criminal or civil action initiated by the United States in a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator), if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such action—

(1) speaks only or primarily a language other than the English language; or

(2) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any criminal or civil action in a United States district court, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

(g)(1) Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary.

(2) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses shall, unless direction is made under paragraph (3) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.

(3) The presiding judicial officer may in such officer's discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action.

(4) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(h) In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.

(i) The term "presiding judicial officer" as used in this section and section 1828 of this title includes a judge of a United States district court, a United States magistrate, and a referee in bankruptcy.

(j) The term "United States district court" as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title.

(k) The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer's motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

(Added Pub. L. 95-539, § 2(a), Oct. 28, 1978, 92 Stat. 2040.)

EFFECTIVE DATE

Section effective ninety days after Oct. 28, 1978, see section 10(b) of Pub. L. 95-539, set out as an Effective Date of 1978 Amendment note under section 602 of this title.

SHORT TITLE

For Short Title of Pub. L. 95-539 as "Court Interpreters Act", see Short Title of 1978 Amendments note set out under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 604 of this title.

§ 1828. Special interpretation services

(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 501 of the Act of August 31, 1951 (ch. 376, title 5, 65 Stat. 290; 31 U.S.C. 483a), but the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.

(c) Except as otherwise provided in this subsection, the expenses incident to providing services under subsection (a) of this section shall be paid by the Director from sums appropriated to the Federal judiciary. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action, and any moneys collected as a result of such order may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section, and moneys collected by the Director under that subsection may be used to reimburse the appropriations charged for such services. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.

(Added Pub. L. 95-539, § 2(a), Oct. 28, 1978, 92 Stat. 2042.)

EFFECTIVE DATE

Section effective ninety days after Oct. 28, 1978, see section 10(b) of Pub. L. 95-539, set out as an Effective Date of 1978 Amendment note under section 602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 1827, 1920 of this title.

CHAPTER 121—JURIES; TRIAL BY JURY

Sec.
1875. Protection of jurors' employment.

AMENDMENTS

1978—Pub. L. 95-572, § 6(a)(2), Nov. 2, 1978, 92 Stat. 2456, added item 1875.

§ 1861. Declaration of policy

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-572, § 1, Nov. 2, 1978, 92 Stat. 2453, provided that: "This Act [enacting sections 1363 and 1875 of this title, amending sections 1863, 1865, 1866, 1869, and 1871 of this title, renumbering section 1363 of this title (relating to construction of references to laws of the United States or Acts of Congress) as section 1364 of this title, and enacting a provision set out as a note under section 1363 of this title] may be cited as the 'Jury System Improvements Act of 1978'."

§ 1863. Plan for random jury selection

[See main edition for text of (a)]

(b) Among other things, such plan shall—

[See main edition for text of (1) to (6)]

(7) fix the time when the names drawn from the qualified jury wheel shall be disclosed to parties and to the public. If the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court, or such other district court judge as the plan may provide, to keep these names confidential in any case where the interests of justice so require.

(8) specify the procedures to be followed by the clerk or jury commission in assigning persons whose names have been drawn from the qualified jury wheel to grand and petit jury panels.

[(9) Renumbered (8)]

[See main edition for text of (c) and (d)]

(As amended Nov. 2, 1978, Pub. L. 95-572, § 2(a), 92 Stat. 2453.)

AMENDMENTS

1978—Subsec. (b)(7) to (9). Pub. L. 95-572 struck out par. (7) relating to random jury selection plan provision for fixing the distance, in miles or in travel time, from each place of holding court beyond which prospective jurors residing should, on individual request, be excused from jury service on the ground of undue hardship in traveling to the place where court was held, now incorporated in definition of "undue hardship or extreme inconvenience" in section 1869(j) of this title, and redesignated former pars. (8) and (9) as (7) and (8).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95-572, set out as an Effective Date note under section 1363 of this title.

§ 1864. Drawing of names from the master jury wheel; completion of juror qualification form

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1869 of this title.

§ 1865. Qualifications for jury service

[See main edition for text of (a)]

(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, shall deem any person qualified to serve on grand and petit juries in the district court unless he—

[See main edition for text of (1) to (4)]

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

(As amended Nov. 2, 1978, Pub. L. 95-572, § 3(a), 92 Stat. 2453.)

AMENDMENTS

1978—Subsec. (b)(5). Pub. L. 95-572 struck out phrase "by pardon or amnesty" following "civil rights have not been restored"

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95-572, set out as an Effective Date note under section 1363 of this title.

§ 1866. Selection and summoning of jury panels

[See main edition for text of (a) and (b)]

(c) Except as provided in section 1865 of this title or in any jury selection plan provision adopted pursuant to paragraph (5) or (6) of section 1863(b) of this title, no person or class of persons shall be disqualified, excluded, excused, or exempt from service as jurors: *Provided*, That any person summoned for jury service may be (1) excused by the court, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person shall be summoned again for jury service under subsections (b) and (c) of this section, or (2) excluded by the court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (5) of this subsection unless the judge, in open court, determines that such is warranted and that exclusion of the person will not be inconsistent with sections 1861 and 1862 of this title. The number of persons excluded under clause (5) of this subsection shall not exceed one per centum of the number of persons who return executed jury qualification forms during the period, specified in the plan, between two consecutive fillings of the master jury wheel. The names of persons excluded under clause (5) of this subsection, together with detailed explanations for the exclusions, shall be forwarded immediately to the judicial council of the circuit, which shall have the power to make any appropriate order, prospective or retroactive, to redress any misapplication of clause (5) of this subsection, but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provisions of this title. Any person excluded from a particular jury under clause (2), (3), or (4) of this subsection shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

[See main edition for text of (d) to (g)]

(As amended Nov. 2, 1978, Pub. L. 95-572, § 2(b), 92 Stat. 2453.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-572 deleted from introductory text reference to par. (7) of section 1863(b) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95-572, set out as an Effective Date note under section 1363 of this title.

§ 1869. Definitions

For purposes of this chapter—

[*See main edition for text of* (a) *to* (g)]

(h) "juror qualification form" shall mean a form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, which shall elicit the name, address, age, race, occupation, education, length of residence within the judicial district, distance from residence to place of holding court, prior jury service, and citizenship of a potential juror, and whether he should be excused or exempted from jury service, has any physical or mental infirmity impairing his capacity to serve as juror, is able to read, write, speak, and understand the English language, has pending against him any charge for the commission of a State or Federal criminal offense punishable by imprisonment for more than one year, or has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored. The form shall request, but not require, any other information not inconsistent with the provisions of this title and required by the district court plan in the interests of the sound administration of justice. The form shall also elicit the sworn statement that his responses are true to the best of his knowledge. Notarization shall not be required. The form shall contain words clearly informing the person that the furnishing of any information with respect to his religion, national origin, or economic status is not a prerequisite to his qualification for jury service, that such information need not be furnished if the person finds it objectionable to do so, and that information concerning race is required solely to enforce nondiscrimination in jury selection and has no bearing on an individual's qualification for jury service.

(i) "public officer" shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office;

(j) "undue hardship or extreme inconvenience", as a basis for excuse from immediate jury service under section 1866(c)(1) of this chapter, shall mean great distance, either in miles or traveltime, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror; and in addition, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service;

(k) "publicly draw", as referred to in sections 1864 and 1866 of this chapter, shall mean a drawing which is conducted within the district after reasonable public notice and which is open to the public at large under the supervision of the clerk or jury commission, except that when a drawing is made by means of electronic data processing, "publicly draw" shall mean a drawing which is conducted at a data processing center located in or out of the district, after reasonable public notice given in the district for which juror names are being drawn, and which is open to the public at large under such supervision of the clerk or jury commission as the Judicial Conference of the United States shall by regulation require; and

(*l*) "jury summons" shall mean a summons issued by a clerk of court, jury commission, or their duly designated deputies, containing either a preprinted or stamped seal of court, and containing the name of the issuing clerk imprinted in preprinted, type, or facsimile manner on the summons or the envelopes transmitting the summons.

(As amended Nov. 2, 1978, Pub. L. 95-572, §§ 3(b), 4, 92 Stat. 2453.)

AMENDMENT OF SUBSEC. (f)

Pub. L. 95-598, title II, § 243, title IV, § 402(b), Nov. 6, 1978, 92 Stat. 2671, 2682, provided that, effective Apr. 1, 1984, subsec. (f) of this section is amended by inserting "chapter 6 of title 28, United States Code," immediately after "chapter 5 of title 28, United States Code,".

AMENDMENTS

1978—Subsec. (h). Pub. L. 95-572, § 3(b), struck out phrase "by pardon or amnesty" following "civil rights restored".

Subsecs. (j) to (*l*). Pub. L. 95-572, § 4, added subsecs. (j) to (*l*).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95-572, set out as an Effective Date note under section 1363 of this title.

§ 1871. Fees

(a) Grand and petit jurors in district courts appearing pursuant to this chapter shall be paid the fees and allowances provided by this section. The requisite fees and allowances shall be disbursed on the certificate of the clerk of court in accordance with the procedure established by the Director of the Administrative Office of the United States Courts. Attendance fees for extended service under subsection (b) of this section shall be certified by the clerk only upon the order of a district judge.

(b)(1) A juror shall be paid an attendance fee of $30 per day for actual attendance at the place of trial or hearing. A juror shall also be paid the attendance fee for the time necessarily occupied in going to and returning from such place at the beginning and end of such service or at any time during such service.

(2) A petit juror required to attend more than thirty days in hearing one case may be paid, in the discretion of the trial judge, an additional fee, not exceeding $5 more than the attendance fee, for each day in excess of thirty days on which he is required to hear such case.

(3) A grand juror required to attend more than forty-five days of actual service may be paid, in the discretion of the district judge in charge of the particular grand jury, an additional fee, not exceeding $5 more than the attendance fee, for each day in excess of forty-five days of actual service.

(4) A grand or petit juror required to attend more than ten days of actual service may be paid, in the discretion of the judge, the appropriate fees at the end of the first ten days and at the end of every ten days of service thereafter.

(5) Certification of additional attendance fees may be ordered by the judge to be made effective commencing on the first day of extended service, without reference to the date of such certification.

(c)(1) A travel allowance not to exceed the maximum rate per mile that the Director of the Administrative Office of the United States Courts has prescribed pursuant to section 604(a)(7) of this title for payment to supporting court personnel in travel status using privately owned automobiles shall be paid to each juror, regardless of the mode of transportation actually employed. The prescribed rate shall be paid for the distance necessarily traveled to and from a juror's residence by the shortest practical route in going to and returning from the place of service. Actual mileage in full at the prescribed rate is payable at the beginning and at the end of a juror's term of service.

(2) The Director shall promulgate rules regulating interim travel allowances to jurors. Distances traveled to and from court should coincide with the shortest practical route.

(3) Toll charges for toll roads, bridges, tunnels, and ferries shall be paid in full to the juror incurring such charges. In the discretion of the court, reasonable parking fees may be paid to the juror incurring such fees upon presentation of a valid parking receipt. Parking fees shall not be included in any tabulation of mileage cost allowances.

(4) Any juror who travels to district court pursuant to summons in an area outside of the contiguous forty-eight States of the United States shall be paid the travel expenses provided under this section, or actual reasonable transportation expenses subject to the discretion of the district judge or clerk of court as circumstances indicate, exercising due regard for the mode of transportation, the availability of alternative modes, and the shortest practical route between residence and court.

(d)(1) A subsistence allowance covering meals and lodging of jurors shall be established from time to time by the Director of the Administrative Office of the United States Courts pursuant to section 604(a)(7) of this title, except that such allowance shall not exceed the allowance for supporting court personnel in travel status in the same geographical area. Claims for such allowance shall not require itemization.

(2) A subsistence allowance shall be paid to a juror when an overnight stay is required at the place of holding court, and for the time necessarily spent in traveling to and from the place of attendance if an overnight stay is required.

(3) A subsistence allowance for jurors serving in district courts outside of the contiguous forty-eight States of the United States shall be allowed at a rate not to exceed that per diem allowance which is paid to supporting court personnel in travel status in those areas where the Director of the Administrative Office of the United States Courts has prescribed an increased per diem fee pursuant to section 604(a)(7) of this title.

(e) During any period in which a jury is ordered to be kept together and not to separate, the actual cost of subsistence shall be paid upon the order of the court in lieu of the subsistence allowances payable under subsection (d) of this section. Such allowance for the jurors ordered to be kept separate or sequestered shall include the cost of meals, lodging, and other expenditures ordered in the discretion of the court for their convenience and comfort.

(f) A juror who must necessarily use public transportation in traveling to and from court, the full cost of which is not met by the transportation expenses allowable under subsection (c) of this section on account of the short distance traveled in miles, may be paid, in the discretion of the court, the actual reasonable expense of such public transportation, pursuant to the methods of payment provided by this section. Jurors who are required to remain at the court beyond the normal business closing hour for deliberation or for any other reason may be transported to their homes, or to temporary lodgings where such lodgings are ordered by the court, in a manner directed by the clerk and paid from funds authorized under this section.

(g) The Director of the Administrative Office of the United States Courts shall promulgate such regulations as may be necessary to carry out his authority under this section.

(As amended Nov. 2, 1978, Pub. L. 95-572, § 5, 92 Stat. 2454.)

AMENDMENTS

1978—Subsecs. (a) to (g). Pub. L. 95-572, in revising the text, substituted subsecs. (a) to (g) for prior five unnumbered paragraphs, and among other changes, deleted reference to fees for service before United States commissioners, now provided for in chapter 43 (section 631 et seq.) of this title relating to United States magistrates; increased to $30 from $20 allowance for actual attendance; continued the discretionary additional fee for extended service, increasing to forty-five from thirty days the basic service requirement; generalized travel allowance provisions in place of 10 cents per mile travel allowance from residence to place of service when commencing and terminating service and any necessary daily or interim travel, not

to exceed a subsistence allowance of $16 per day; and deleted provision for same fees for service in districts courts for districts of Guam and Canal Zone as provided for services in other Federal district courts as covered in definition of "district court of the United States" in section 1869(f) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror serving on or after the sixtieth day following Nov. 2, 1978, see section 7(b) of Pub. L. 95-572, set out as an Effective Date note under section 1363 of this title.

§ 1875. Protection of jurors' employment

(a) No employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States.

(b) Any employer who violates the provisions of this section—

(1) shall be liable for damages for any loss of wages or other benefits suffered by an employee by reason of such violation;

(2) may be enjoined from further violations of this section and ordered to provide other appropriate relief, including but not limited to the reinstatement of any employee discharged by reason of his jury service; and

(3) shall be subject to a civil penalty of not more than $1,000 for each violation as to each employee.

(c) Any individual who is reinstated to a position of employment in accordance with the provisions of this section shall be considered as having been on furlough or leave of absence during his period of jury service, shall be reinstated to his position of employment without loss of seniority, and shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such individual entered upon jury service.

(d)[1] An individual claiming that his employer has violated the provisions of this section may make application to the district court for the district in which such employer maintains a place of business and the court shall, upon finding probable merit in such claim, appoint counsel to represent such individual in any action in the district court necessary to the resolution of such claim. Such counsel shall be compensated and necessary expenses repaid to the extent provided by section 3006A of title 18, United States Code.

(2) In any action or proceeding under this section, the court may award a prevailing employee who brings such action by retained counsel a reasonable attorney's fee as part of the costs. The court may award a prevailing employer a reasonable attorney's fee as part of the costs if the court determines that the action is frivolous, vexatious, or brought in bad faith.

(Added Pub. L. 95-572, § 6(a)(1), Nov. 2, 1978, 92 Stat. 2456.)

[1] Subsec. (d) enacted without a par. "(1)" designation.

EFFECTIVE DATE

Section applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95-572, set out as an Effective Date note under section 1363 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1363 of this title.

CHAPTER 123—FEES AND COSTS

Sec.
1930. Bankruptcy courts.

AMENDMENTS

1978—Pub. L. 95-598, title II, § 246(b), Nov. 6, 1978, 92 Stat. 2672, added item 1930.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 sections 507, 707, 1307, 1325.

§ 1913. Courts of appeals

JUDICIAL CONFERENCE SCHEDULE OF FEES

The Judicial Conference of the United States at its session on March 7-9, 1979, revised the schedule of fees to be charged in the United States courts of appeals pursuant to this section. The new schedule becomes effective on October 1, 1979.

Fees to be paid to clerks of courts of appeals (except that no fees are to be charged for services rendered on behalf of the United States).

1. For docketing a case on appeal or review, or docketing any other proceeding—$65.00. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. 1292(b), unless the appeal is allowed.

2. For every search of the records of the court and certifying the results thereof, $2.00.

3. For certifying any document or paper, whether the certification is made directly on the document, or by separate instrument, $2.00.

4. For reproducing any record or paper, 50 cents per page. This fee does not include certification.

5. For comparing with the original thereof any copy of any transcript of record, entry, record or paper, when such copy is furnished by any person requesting certification, $2.00 per page or fraction thereof. This fee is in addition to the fee for certification.

6. For reproduction of magnetic tape audio recordings, either cassette or reel-to-reel, $2.00 plus the cost of materials, minimum charge $5.00.

7. For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to Rule 30(f), Federal Rules of Appellate Procedure, a flat fee of $25.00.

8. Fees to be charged and collected for copies of opinions shall be fixed, from time to time, by each court, commensurate with the cost of printing.

No other fees for miscellaneous services than those prescribed by the Judicial Conference of the United States shall be charged or collected by any clerk of court.

§ 1914. District court; filing and miscellaneous fees; rules of court

(a) The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a

filing fee of $60, except that on application for a writ of habeas corpus the filing fee shall be $5.

[*See main edition for text of* (b) *to* (d)]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 244, 92 Stat. 2671.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-598 substituted "$60" for "$15".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

JUDICIAL CONFERENCE SCHEDULE OF ADDITIONAL FEES

The Judicial Conference of the United States, at its session on March 7-9, 1979, revised the schedule of fees to be charged in the United States District Court pursuant to this section. The new schedule becomes effective on October 1, 1979.

Fees to be charged for services performed by clerks of the district courts (except that no fees are to be charged for services rendered on behalf of the United States).

1. For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid, $3.00. This fee is applicable to the filing of a petition to perpetuate testimony, Rule 27(a), Federal Rules of Civil Procedure, the filing of papers by trustees under 28 U.S.C. § 754, and the filing of letters rogatory or letters of request, except that the fee for registering a judgment from another district pursuant to 28 U.S.C. § 1963 shall be $10.00.

2. For filing a requisition for and certifying the results of a search of the records of the court for judgments, decrees, other instruments, suits pending, and bankruptcy proceedings, $2.00 for each name searched.

3. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, $2.00.

4. For reproducing any record or paper, 50 cents per page. This fee does not include certification.

5. For comparing with the original thereof any copy of any transcript of record, entry, record or paper, when such copy is furnished by any person requesting certification, $2.00 per page or fraction thereof. This fee is in addition to the fee for certification.

6. For reproduction of magnetic tape audio recordings, either cassette or reel-to-reel, $2.00 plus the cost of materials, minimum charge $5.00.

7. For admission of attorneys to practice, $15.00 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, $3.00.

No other fees for miscellaneous services than those prescribed by the Judicial Conference of the United States shall be charged or collected by any clerk of court.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1930 of this title.

§ 1915. Proceedings in forma pauperis

[*See main edition for text of* (a)]

(b) Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

[*See main edition for text of* (c) *to* (e)]

(As amended Oct. 10, 1979, Pub. L. 96-82, § 6, 93 Stat. 645.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-82 substituted "Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title" and "Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts" for "In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1930 of this title; title 18 section 3006A.

§ 1920. Taxation of costs

A judge or clerk of any court of the United States may tax as costs the following:

[*See main edition for text of* (1) *to* (4)]

(5) Docket fees under section 1923 of this title;

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

(As amended Oct. 28, 1978, Pub. L. 95-539, § 7, 92 Stat. 2044.)

AMENDMENTS

1978—Par. (6). Pub. L. 95-539 added par. (6).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-539 effective Oct. 28, 1978, see section 10(a) of Pub. L. 95-539, set out as an

Effective Date of 1978 Amendment note under section 602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 2412 of this title.

§ 1923. Docket fees and costs of briefs

[See main edition for text of (a)]

(b) The docket fees of United States attorneys and United States trustees shall be paid to the clerk of court and by him paid into the Treasury.

[See main edition for text of (c)]

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 245, 92 Stat. 2671.)

REPEAL OF REFERENCES TO UNITED STATES TRUSTEE

Section 408(c) of Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2687, provided that all references to United States trustees contained in this title are deleted, as of Apr. 1, 1984.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-598 added "and United States trustees" following "United States attorneys".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1930. Bankruptcy courts

(a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the bankruptcy court the following filing fees:

(1) For a case commenced under chapter 7 or 13 of title 11, $60.

(2) For a case commenced under chapter 9 of title 11, $300.

(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, $200.

(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, $500.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments.

(b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title.

(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari $5 shall be paid to the clerk of the bankruptcy court, by the appellant or petitioner.

(d) Whenever any case or proceeding is dismissed in any bankruptcy court for want of jurisdiction, such court may order the payment of just costs.

(e) The clerk of the bankruptcy court may collect only the fees prescribed under this section.

(Added Pub. L. 95-598, title II, § 246(a), Nov. 6, 1978, 92 Stat. 2671.)

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

JUDICIAL CONFERENCE SCHEDULE OF FEES

The Judicial Conference of the United States at its session on March 7-9, 1979, adopted a schedule of fees to be charged in bankruptcy courts pursuant to this section. The schedule becomes effective on October 1, 1979.

Services to be performed by clerks of the bankruptcy courts (except that no fees are to be charged for services rendered on behalf of the United States).

1. For reproducing any record or paper 50 cents per page. This fee does not include certification.

2. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, $2.00.

3. For comparing with the original thereof any copy of any transcript of record, entry, record or paper, when such copy is furnished by any person requesting certification, $2.00 per page or fraction thereof. This fee is in addition to the fee for certification.

4. For reproduction of magnetic tape audio recordings, either cassette or reel-to-reel; $2.00 plus the cost of materials, minimum charge $5.00.

5. For amendments to a debtor's schedules or lists of creditors after notice to creditors, $10.00 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case.

6. For every search of the records of the bankruptcy court conducted by the clerk of the bankruptcy court or one of his deputies, $2.00 per name or item searched.

7. For instituting any civil action, suit or proceeding in a controversy over which the bankruptcy court does not have exclusive jurisdiction, whether by original process, removal or otherwise, $60.00; for filing a complaint in a controversy over which the court has exclusive jurisdiction, $15.00.

If the United States, other than the United States Trustee acting as trustee in a case under Title II, is the plaintiff, no fee is required.

If the trustee in a case under Title II is the plaintiff, the fee shall be payable only from the estate and to the extent there is any estate.

8. For filing or indexing any paper not in a case or proceeding for which a filing fee has been paid, $3.00, except that the fee for registering a judgement from another district shall be $10.00.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 11 section 104.

CHAPTER 129—MONEYS PAID INTO COURT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 section 347.

CHAPTER 131—RULES OF COURTS

§ 2071. Rule-making power generally

AMENDMENTS TO CRIMINAL RULES AND RULES OF EVIDENCE PROPOSED APRIL 30, 1979; POSTPONEMENT OF EFFECTIVE DATE

Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided: "That notwithstanding any provision of section 3771 or 3772 of title 18 of the United States Code or of section 2072, 2075, or 2076 of title 28 of the United States Code to the contrary—

"(1) the amendments proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, to the Federal Rules of Criminal Procedure affecting rules 11(e)(6), 17(h), 32(f), and 44(c), and adding new rules 26.2 and 32.1, and the amendment so proposed and transmitted to the Federal Rules of Evidence affecting rule 410, shall not take effect until December 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier; and

"(2) the amendment proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, affecting rule 40 of the Federal Rules of Criminal Procedure shall take effect on August 1, 1979, with the following amendments:

"(A) In the matter designated as paragraph (1) of subdivision (d), strike out 'in accordance with Rule 32.1(a)'.

"(B) In the matter designated as paragraph (2) of subdivision (d), strike out 'in accordance with Rule 32.1(a)(1)'."

§ 2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.

(As amended Pub. L. 95-598, title II, § 247, Nov. 6, 1978, 92 Stat. 2672.)

Amendments

1978—Pub. L. 95-598 substituted "in cases under title 11" for "under the Bankruptcy Act" and struck out provisions directing that all laws in conflict with bankruptcy rules be of no further force or effect after such rules have taken effect.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Section Referred to in Other Sections

This section is referred to in title 48 sections 1424, 1615.

CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

§ 2107. Time for appeal to court of appeals

Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

In any such action, suit or proceeding in which the United States or an officer or agency thereof is a party, the time as to all parties shall be sixty days from such entry.

In any action, suit or proceeding in admiralty, the notice of appeal shall be filed within ninety days after the entry of the order, judgment or decree appealed from, if it is a final decision, and within fifteen days after its entry if it is an interlocutory decree.

The district court or the bankruptcy court may extend the time for appeal not exceeding thirty days from the expiration of the original time herein prescribed, upon a showing of excusable neglect based on failure of a party to learn of the entry of the judgment, order or decree.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 248, 92 Stat. 2672.)

Amendments

1978—Pub. L. 95-598 added "or the bankruptcy court" following "district court" in the provision authorizing the extension of the time for appeal upon a showing of excusable neglect and struck out paragraph which had directed that this section not apply to bankruptcy matters or other proceedings under Title 11.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-598 effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 2112. Record on review and enforcement of agency orders

Section Referred to in Other Sections

This section is referred to in section 2346 of this title; title 5 section 7123; title 7 sections 8, 9, 136n, 194, 1115, 1600, 1601; title 12 sections 93, 504, 505, 1464, 1730, 1730a, 1786, 1818, 1828, 1848, 1972; title 15 sections 21, 45, 57a, 78y, 79x, 80a-42, 80b-13, 687e, 717r, 1193, 1262, 1394, 1474, 1710, 1825, 1913, 2008, 2060, 2618, 3416; title 16 sections 825*l*, 1030, 1536, 1858; title 19 sections 81r, 1641; title 20 sections 351d, 1110c, 1207, 1234d, 1263, 1413, 1416, 2309, 2740, 2851, 3086; title 21 sections 346a, 348, 355, 360g, 371; title 22 section 1631f; title 26 sections 3310, 6363; title 27 section 204; title 29 sections 160, 210, 660, 667, 721; title 30 section 816; title 31 section 1263; title 33 section 921; title 39 section 3628; title 40 section 333; title 42 sections 263a, 263f, 291h, 504, 1316, 2022, 3027, 3785, 5311, 5405, 6068, 6306, 6869, 7525, 8412; title 43 sections 355, 1349; title 46 section 1181; title 47 section 402; title 49 sections 1486, 1674b.

PART VI—PARTICULAR PROCEEDINGS

CHAPTER 151—DECLARATORY JUDGMENTS

§ 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(As amended Nov. 6, 1978, Pub. L. 95-598, title II, § 249, 92 Stat. 2672.)

AMENDMENTS

1978—Pub. L. 95-598 added reference to proceedings under section 505 or 1146 of title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 153—HABEAS CORPUS

Sec.
2256. Habeas corpus from bankruptcy courts.

AMENDMENTS

1978—Pub. L. 95-598, title II, § 250(b), Nov. 6, 1978, 92 Stat. 2672, added item 2256.

§ 2254. State custody; remedies in State courts

RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS

Rule 10. Powers of Magistrates

The duties imposed upon the judge of the district court by these rules may be performed by a United States magistrate pursuant to 28 U.S.C. § 636.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

ADVISORY COMMITTEE NOTE

This amendment conforms the rule to subsequently enacted legislation clarifying and further defining the duties which may be assigned to a magistrate, 18 U.S.C. § 636, as amended in 1976 by Pub. L. 94-577. To the extent that rule 10 is more restrictive than § 636, the limitations are of no effect, for the statute expressly governs "[n]otwithstanding any provision of law to the contrary."

The reference to particular rules is stricken, as under § 636(b)(1)(A) a judge may designate a magistrate to perform duties under other rules as well (e.g., order that further transcripts be furnished under rule 5; appoint counsel under rule 8). The reference to "established standards and criteria" is stricken, as § 636(4) requires each district court to "establish rules pursuant to which the magistrates shall discharge their duties." The exception with respect to a rule 4 order dismissing a petition is stricken, as that limitation appears in § 636(b)(1)(B) and is thereby applicable to certain other actions under these rules as well (e.g., determination of a need for an evidentiary hearing under rule 8; dismissal of a delayed or successive petition under rule 9).

§ 2255. Federal custody; remedies on motion attacking sentence

RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS

Rule 10. Powers of Magistrates

The duties imposed upon the judge of the district court by these rules may be performed by a United States magistrate pursuant to 28 U.S.C. § 636.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

ADVISORY COMMITTEE NOTE

This amendment conforms the rule to 18 U.S.C. § 636. See Advisory Committee Note to rule 10 of the Rules Governing Section 2254 Cases in the United States District Courts.

Rule 11. Time for Appeal

The time for appeal from an order entered on a motion for relief made pursuant to these rules is as provided in Rule 4(a) of the Federal Rules of Appellate Procedure. Nothing in these rules shall be construed as extending the time to appeal from the original judgment of conviction in the district court.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

ADVISORY COMMITTEE NOTE

Prior to the promulgation of the Rules Governing Section 2255 Proceedings, the courts consistently held that the time for appeal in a section 2255 case is as provided in Fed.R.App.P. 4(a), that is, 60 days when the government is a party, rather than as provided in appellate rule 4(b), which says that the time is 10 days in criminal cases. This result has often been explained on the ground that rule 4(a) has to do with civil cases and that "proceedings under section 2255 are civil in nature." E. g., *Rothman* v. *United States*, 508 F.2d 648 (3d Cir. 1975). Because the new section 2255 rules are based upon the premise "that a motion under § 2255 is a further step in the movant's criminal case rather than a separate civil action," see Advisory Committee Note to rule 1, the question has arisen whether the new rules have the effect of shortening the time for appeal to that provided in appellate rule 4(b). A sentence has been added to rule 11 in order to make it clear that this is not the case.

Even though section 2255 proceedings are a further step in the criminal case, the added sentence correctly states current law. In *United States* v. *Hayman*, 342 U.S. 205 (1952), the Supreme Court noted that such appeals "are governed by the civil rules applicable to appeals from final judgments in habeas corpus actions." In support, the Court cited *Mercado* v. *United States*, 183 F.2d 486 (1st Cir. 1950), a case rejecting the argument that because § 2255 proceedings are criminal in nature the time for appeal is only 10 days. The *Mercado* court concluded that the situation was governed by that part of 28 U.S.C. § 2255 which reads: "An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus." Thus, because appellate rule 4(a) is applicable in habeas cases, it likewise governs in § 2255 cases even though they are criminal in nature.

§ 2256. Habeas corpus from bankruptcy courts

A bankruptcy court may issue a writ of habeas corpus—

(1) when appropriate to bring a person before the court—

(A) for examination;

(B) to testify; or

(C) to perform a duty imposed on such person under this title; or

(2) ordering the release of a debtor in a case under title 11 in custody under the judgment of a Federal or State court if—

(A) such debtor was arrested or imprisoned on process in any civil action;

(B) such process was issued for the collection of a debt—

(i) dischargeable under title 11; or

(ii) that is or will be provided for in a plan under chapter 11 or 13 of title 11; and

(C) before the issuance of such writ, notice and a hearing have been afforded the adverse party of such debtor in custody to contest the issuance of such writ.

(Added Pub. L. 95-598, title II, § 250(a), Nov. 6, 1978, 92 Stat. 2672.)

PRIOR PROVISIONS

A prior section 2256, added Pub. L. 95-144, § 3, Oct. 28, 1977, 91 Stat. 1220, which related to jurisdiction of proceedings relating to transferred offenders, was transferred to section 3244 of Title 18, Crimes and Criminal Procedure, by Pub. L. 95-598, title III, § 314(j), Nov. 6, 1978, 92 Stat. 2677.

EFFECTIVE DATE

Section effective Apr. 1, 1984, see section 402(b) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 157—INTERSTATE COMMERCE COMMISSION ORDERS; ENFORCEMENT AND REVIEW

§ 2321. Judicial review of Commission's orders and decisions; procedure generally; process

[*See main edition for text of* (a) *and* (b)]

(c) The orders, writs, and process of the district courts may, in the cases specified in subsection (b) and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49, run, be served and be returnable anywhere in the United States.

(As amended Oct. 17, 1978, Pub. L. 95-473, § 2(a)(3)(B), 92 Stat. 1465.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-473 substituted "enforcement actions and actions to collect civil penalties under subtitle IV of title 49" for "actions under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43)"

§ 2323. Duties of Attorney General; intervenors

The Attorney General shall represent the Government in the actions specified in section 2321 of this title and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49.

[*See main edition for text of 2d to 4th unnumbered pars.*]

(As amended Oct. 17, 1978, Pub. L. 95-473, § 2(a)(3)(C), 92 Stat. 1465.)

AMENDMENTS

1978—Pub. L. 95-473 in the provisions relating to the representation of the Government by the Attorney General substituted "enforcement actions and actions to collect civil penalties under subtitle IV of title 49" for "actions under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43)"

CHAPTER 158—ORDERS OF FEDERAL AGENCIES; REVIEW

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2321 of this title; title 5 section 7703; title 8 section 1105a; title 39 section 3628; title 42 section 2239; title 47 section 402; title 50 section 167h.

§ 2341. Definitions

ABOLITION OF THE ATOMIC ENERGY COMMISSION

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§ 2342. Jurisdiction of court of appeals

The court of appeals has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

[*See main edition for text of* (1) *to* (3)]

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

(5) all rules, regulations, or final orders of the Interstate Commerce Commission made reviewable by section 2321 of this title; and

(6) all final orders of the Merit Systems Protection Board except as provided for in section 7703(b) of title 5.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

(As amended Pub. L. 95-454, title II, § 206, Oct. 13, 1978, 92 Stat. 1144.)

AMENDMENTS

1978—Par. (6). Pub. L. 95-454 added par. (6).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of Title 5, Government Organization and Employees.

ABOLITION OF THE ATOMIC ENERGY COMMISSION

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

CHAPTER 161—UNITED STATES AS PARTY GENERALLY

§ 2401. Time for commencing action against United States

(a) Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

[*See main edition for text of* (b)]

(As amended Nov. 1, 1978, Pub. L. 95-563, § 14(b), 92 Stat. 2389.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (a), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-563 added Contract Disputes Act of 1978 exception.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-563 effective with respect to contracts entered into 120 days after Nov. 1, 1978 and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95-563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2671 of this title; title 49 section 1540.

§ 2411. Interest

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6612; title 31 section 724a; title 42 section 418.

§ 2414. Payment of judgments and compromise settlements

Except as provided by the Contract Disputes Act of 1978, payment of final judgments rendered by a district court against the United States shall be made on settlements by the General Accounting Office. Payment of final judgments rendered by a State or foreign court or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the General Accounting Office after certification by the Attorney General that it is in the interest of the United States to pay the same.

[See main edition for text of 2d and 3d unnumbered pars.]

(As amended Nov. 1, 1978, Pub. L. 95-563, § 14(d), 92 Stat. 2390.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in first paragraph, is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

AMENDMENTS

1978—Pub. L. 95-563 added Contract Disputes Act of 1978 exception.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95-563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

§ 2415. Time for commencing actions brought by the United States

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: *Provided further*, That an action for money damages brought by the United States for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: *Provided further*, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed after April 1, 1980 or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided*, That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought on or before April 1, 1980.

[See main edition for text of (c) to (h)]

(As amended Pub. L. 95-64, July 11, 1977, 91 Stat. 268; Pub. L. 95-103, Aug. 15, 1977, 91 Stat. 842.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–103, § 1(a), substituted "after April 1, 1980" for "after August 18, 1977".

Pub. L. 95–64, § 1(a), substituted "unless the complaint is filed after August 18, 1977" for "unless the complaint is filed more than eleven years after the right of action accrued" in the proviso covering actions for money damages brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status based upon rights of action which accrued on July 18, 1966, in accordance with subsec. (g).

Subsec. (b). Pub. L. 95–103, § 1(b), substituted "on or before April 1, 1980" for "on or before August 18, 1977".

Pub. L. 95–64, § 1(b), substituted "may be brought on or before August 18, 1977" for "may be brought within eleven years after the right of action accrues" in the proviso covering actions for or on behalf of recognized tribes, bands, or groups of American Indians, including actions related to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status based upon rights of action which accrued on July 18, 1966, in accordance with subsec. (g).

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

§ 2464. Security; special bond

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 sections 916g, 958, 959, 971f, 1100a–1.

CHAPTER 165—COURT OF CLAIMS PROCEDURE

Sec.
2510. Referral of cases by the Comptroller General or the head of an executive department or agency.

AMENDMENTS

1978—Pub. L. 95–563, § 14(h)(2)(B), Nov. 1, 1978, 92 Stat. 2390, inserted "or the head of an executive department or agency" following "Comptroller General" in item 2510.

§ 2510. Referral of cases by the Comptroller General or the head of an executive department or agency

(a) The Comptroller General may transmit to the Court of Claims for trial and adjudication any claim or matter of which the Court of Claims might take jurisdiction on the voluntary action of the claimant, together with all vouchers, papers, documents, and proofs pertaining thereto.

The Court of Claims shall proceed with the claims or matters so referred as in other cases pending in such court and shall render judgment thereon.

(b)(1) The head of any executive department or agency may, with the prior approval of the Attorney General, refer to the Court of Claims for judicial review any final decision rendered by a board of contract appeals pursuant to the terms of any contract with the United States awarded by that department or agency which such head of such department or agency has concluded is not entitled to finality pursuant to the review standards specified in section 10(b) of the Contracts Disputes Act of 1978. The head of each executive department or agency shall make any referral under this section within one hundred and twenty days of the receipt of a copy of the final appeal decision.

(2) The Court of Claims shall review the matter referred in accordance with the standards specified in section 10(b) of the Contracts Disputes Act of 1978. The Court shall proceed with judicial review on the administrative record made before the board of contract appeals on matters so referred as in other cases pending in such court, shall determine the issue of finality of the appeal decision, and shall, as appropriate, render judgment thereon, take additional evidence, or remand the matter pursuant to the authority specified in section 1491 of this title.

(As amended Nov. 1, 1978, Pub. L. 95–563, § 14(h)(1), (2)(A), 92 Stat. 2390.)

REFERENCES IN TEXT

Section 10(b) of the Contracts Disputes Act of 1978, referred to in subsec. (b), probably means section 10(b) of the Contract Disputes Act of 1978, Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2388, which is classified to section 609(b) of Title 41, Public Contracts.

AMENDMENTS

1978—Pub. L. 95–563, inserted "or the head of an executive department or agency" in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 section 607.

§ 2517. Payment of judgments

(a) Except as provided by the Contract Disputes Act of 1978, every final judgment rendered by the Court of Claims against the United States shall be paid out of any general appropriation therefor, on presentation to the General Accounting Office of a certification of the judgment by the clerk and chief judge of the court.

(b) Payment of any such judgment and of interest thereon shall be a full discharge to the United States of all claims and demands arising out of the matters involved in the case or controversy, unless the judgment is designated a partial judgment, in which event only the matters described therein shall be discharged.

(As amended Nov. 1, 1978, Pub. L. 95–563, § 14(e), (f), 92 Stat. 2390.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (a), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–563, § 14(e), added Contract Disputes Act of 1978 exception.

Subsec. (b). Pub. L. 95-563, § 14(f), added provision relating to discharge of partial judgments.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95-563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2412 of this title; title 16 sections 79g, 460bb-2; title 25 section 70v-3; title 31 section 724a.

§ 2518. Certification of judgments for appropriation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 70v-3; title 31 section 724a.

CHAPTER 167—COURT OF CUSTOMS AND PATENT APPEALS PROCEDURE

§ 2602. Precedence of American manufacturer, producer, or wholesaler cases

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (b), are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of Title 19, Customs Duties.

CHAPTER 169—CUSTOMS COURT PROCEDURE

Sec.
2633. Precedence of cases.

AMENDMENTS

1979—Pub. L. 96-39, title X, § 1001(b)(4)(F), July 26, 1979, 93 Stat. 306, substituted "Precedence of cases" for "Precedence of American manufacturer, producer, or wholesaler cases" in item 2633.

§ 2632. Customs Court procedure and fees

[*See main edition for text of (a) to (e)*]

(f) Except as provided in section 516A of the Tariff Act of 1930, upon service of the summons on the Secretary of the Treasury or his designee in any action brought under subsection (a)(1) or (a)(2), the appropriate customs officer shall forthwith transmit the following items, if they exist, to the United States Customs Court as part of the official record of the civil action: (1) consumption or other entry; (2) commercial invoice; (3) special Customs invoice; (4) copy of protest; (5) copy of denial of protest in whole or in part; (6) importer's exhibits; (7) official samples; (8) any official laboratory reports; and (9) the summary sheet. If any of the aforesaid items do not exist in the particular case, an affirmative statement to that effect shall be transmitted as part of the official record.

[*See main edition for text of (g)*]

(As amended July 26, 1979, Pub. L. 96-39, title X, § 1001(b)(4)(C), 93 Stat. 306.)

REFERENCES IN TEXT

Section 201 of the Antidumping Act, 1921, referred to in subsecs. (a) and (g), was classified to section 160 of Title 19, Customs Duties. The Antidumping Act, 1921, is act May 27, 1921, ch. 14, 42 Stat. 11, as amended, which was classified generally to sections 160 to 171 of Title 19, and was repealed by Pub. L. 96-39, title I, § 106(a), July 26, 1979, 93 Stat. 193. See section 1673 et seq. of Title 19.

Section 516A of the Tariff Act of 1930, referred to in subsec. (f), is classified to section 1516a of Title 19, Customs Duties.

AMENDMENTS

1979—Subsec. (f). Pub. L. 96-39 inserted introductory phrase "Except as provided in section 516A of the Tariff Act of 1930".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on the date on which title VII of the Tariff Act of 1930 takes effect, which title, under section 107 of Pub. L. 96-39, shall take effect on Jan. 1, 1980, with certain conditions, see sections 107 and 1002 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of Title 19, Customs Duties.

TRANSFER OF FUNCTIONS

All functions of the Secretary of the Treasury pursuant to subsec. (e) of this section insofar as it relates to actions taken by the Secretary of the Treasury reviewable under section 1516a of Title 19, Customs, were transferred to the Secretary of Commerce by Reorg. Plan No. 3 of 1979, § 5(a)(1)(H), eff. Oct. 1, 1980, 44 F.R. 69275, 93 Stat. 1381, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2637 of this title; title 19 sections 1514, 1516, 1516a.

§ 2633. Precedence of cases

(a) Every proceeding in the Customs Court arising under section 516 and section 516A of the Tariff Act of 1930, as amended, shall be given precedence over other cases on the docket of the court, and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(b) Of those proceedings given precedence under subsection (a) of this section, any proceeding for the review of a determination under section 516A(a)(1)(B) or 516A(a)(1)(E) of the Tariff Act of 1930 shall be given priority over other such proceedings.

(As amended July 26, 1979, Pub. L. 96-39, title X, § 1001(b)(4)(D), 93 Stat. 306.)

REFERENCES IN TEXT

Sections 516 and 516A of the Tariff Act of 1930, referred to in text, are classified to sections 1516 and 1516a, respectively, of Title 19, Customs Duties.

AMENDMENTS

1979—Pub. L. 96-39 deleted from section heading "American manufacturer, producer, or wholesaler" preceding "cases"; designated existing provisions as subsec. (a) and inserted therein reference to section 516A of the Tariff Act of 1930; and added subsec. (b).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on the date on which title VII of the Tariff Act of 1930 takes effect, which title, under section 107 of Pub. L. 96-39, shall take effect on Jan. 1, 1980, with certain conditions, see sections 107 and 1002 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of Title 19, Customs Duties.

§ 2636. Analysis of imported merchandise

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 section 1516a.

§ 2637. Witnesses; inspection of documents

(a) Except as otherwise provided by law, in any proceeding in the Customs Court, under rules prescribed by the court, the parties and their attorneys shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and all papers admitted or offered as evidence, except as provided in subsection (b) of this section.

(b) In an action instituted under section 2632(a) of this title, the plaintiff may not inspect any documents or papers of a consignee or importer disclosing any information which the Customs Court deems unnecessary or improper to be disclosed.

(As amended July 26, 1979, Pub. L. 96-39, title X, § 1001(b)(4)(E), 93 Stat. 306.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-39, § 1001(b)(4)(E)(i), inserted introductory phrase "Except as otherwise provided by law".

Subsec. (b). Pub. L. 96-39, § 1001(b)(4)(E)(ii), substituted "under section 2632(a) of this title" for "by an American manufacturer, producer, or wholesaler"

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective on the date on which title VII of the Tariff Act of 1930 takes effect, which title, under section 107 of Pub. L. 96-39, shall take effect on Jan. 1, 1980, with certain conditions, see sections 107 and 1002 of Pub. L. 96-39, set out as Effective Date notes under sections 1516a and 1671 of Title 19, Customs Duties.

CHAPTER 171—TORT CLAIMS PROCEDURE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1346 of this title; title 2 section 190g; title 5 sections 3111, 3373, 3374, 5564; title 15 section 637; title 16 sections 565a-2, 742f, 742*l*, 1703; title 20 section 1105; title 22 sections 2504, 3508, 3761; title 29 sections 938, 995; title 37 section 554; title 39 section 409; title 42 section 5055; title 45 section 437; title 46 section 740.

§ 2671. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 995.

§ 2672. Administrative adjustment of claims

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2678, 2679 of this title; title 10 sections 1089, 2733; title 15 section 2081; title 21 section 904; title 22 sections 817, 1474, 2669; title 29 section 938; title 31 section 724a; title 32 section 715; title 38 sections 236, 351, 4116; title 39 section 2603; title 42 sections 233, 2458a, 5055.

§ 2677. Compromise

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2672, 2678 of this title; title 10 section 1089; title 22 section 817; title 31 section 724a; title 38 sections 351, 4116; title 42 sections 2458a, 5055.

§ 2680. Exceptions

APPLICABILITY OF SUBSEC. (j)

Joint Res. July 3, 1952, ch. 570, § 1(a)(32), 66 Stat. 333, as amended by Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, and Joint Res. June 30, 1953, ch. 172, 67 Stat. 132, provided that subsec. (j) of this section, in addition to coming into full force and effect in time of war, should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc. No. 2914, 15 F.R. 9029, set out as a note preceding section 1 of Title 50 Appendix, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond Aug. 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655 of Title 49, Transportation. Section 1655 of title 49, however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 1089; title 15 section 2053; title 21 section 904; title 22 section 1474; title 42 sections 233, 2458a.

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JUDICIAL PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

Pub. L. 95-521, title III, Oct. 26, 1978, 92 Stat. 1851, as amended Pub. L. 96-19, §§ 2(a)(3), (c)(3), 3(a)(3), (b), 4(c), 6, 7(a)-(c), (d)(2), (e), (f), 8(c), 9(c)(3), (d), (j), (p)-(r), June 13, 1979, 93 Stat. 37-43

Sec.
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§ 301. Persons required to file

(a) Within thirty days of assuming the position of a judicial employee, an individual shall file a report containing the information described in section 302(b).

(b) Within five days of the transmittal by the President to the Senate of the nomination of an individual to be a judicial officer, such individual shall file a report containing the information described in section 302(b). Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(c) Any individual who is a judicial officer or employee during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 302(a).

(d) Any individual who occupies a position as a judicial officer or employee shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 302(a) covering the preceding calendar year if the report required by subsection (c) of this subsection has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position as a judicial officer or employee.

(e) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the Judicial Ethics Committee established pursuant to section 303(a) of this title (hereinafter in this title referred to as the "Committee"), but the total of such extensions shall not exceed ninety days.

(f) The provisions of subsections (a) and (d) of this section shall not apply to an individual who, as determined by the Judicial Ethics Committee, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year—

(1) the report required by subsection (a) of this section shall be filed within fifteen days of the sixtieth day, and

(2) the report required by subsection (d) of this section shall be filed as provided in such subsection.

(g) The Committee may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year but only if the Committee determines that—

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

(As amended Pub. L. 96-19, §§ 2(a)(3), (c)(3), 9(p), June 13, 1979, 93 Stat. 37, 38, 43.)

References in Text

This Act, referred to in subsec. (b), means Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, known as the Ethics in Government Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 2, The Congress, and Tables.

This title, referred to in subsec. (e), is title III of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1851, which is classified to sections 301 to 309 of this Appendix. Section 303(a) of this title is classified to section 303(a) of this Appendix.

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-19, § 9(p), substituted "the calendar year in which such termination occurs" for "that calendar year".

Subsecs. (f), (g). Pub. L. 96-19, § 2(a)(3), added subsecs. (f) and (g).

SHORT TITLE

For Short Title of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, as the "Ethics in Government Act of 1978", see section 1 of Pub. L. 95-521, set out as a Short Title note under section 701 of Title 2, The Congress.

§ 302. Contents of reports

(a) Each report filed pursuant to section 301(c) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $100 or more in value.

(B) The source and type of income which consists of dividends, rent, interest, and capital gains received during the preceding calendar year which exceeds $100 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within—

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000, or

(vii) greater than $100,000.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(C) The identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

(D) In an unusual case, a gift need not be aggregated under subparagraph (A) or (B) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale, or exchange during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transactions solely by and between the reporting individual, his spouse, or dependent children.

(6) The identity of all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This paragraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer

other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed pursuant to subsections (a) and (b) of section 301 shall include a full and complete statement with respect to the information required by—

(1) paragraph (1) of subsection (a) of this section for the year of filing and the preceding calendar year,

(2) paragraphs (3) and (4) of subsection (a) of this section as of the date specified in the report but which is less than thirty-one days before the filing date, and

(3) paragraphs (6) and (7) of subsection (a) of this section as of the filing date but for periods described in such paragraphs.

(c) In the case of any individual described in section 301(d) of this title, any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), and (5) of subsection (a) of this section are as follows:

(A) not more than $5,000;

(B) greater than $5,000 but not more than $15,000;

(C) greater than $15,000 but not more than $50,000;

(D) greater than $50,000 but not more than $100,000;

(E) greater than $100,000 but not more than $250,000; and

(F) greater than $250,000.

(2) For the purposes of paragraph (3) of subsection (a) of this section if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) of this section is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by subsection (a), (b), or (c) of this section shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and, with respect to his spouse or dependent child, all information required to be reported in subsection (a)(1)(B) of this section with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gifts received by a spouse which are not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment or the value of other gifts.

(C) In the case of any reimbursements received by a spouse which are not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of each such reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a) of this section, as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to sub-

sections (a), (b), and (c) of this subsection[1] with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual other than a judicial officer of the United States need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holding or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust under subsection (a)(1)(B) of this section.

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, a broker, or an investment adviser, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is not or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1)(B) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

For purposes of this subsection "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 78c(a)(4) of title 15; "investment adviser" includes any investment adviser who, as determined under regulations pre-

[1] So in original. Probably should be "section"

scribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts; and "supervising ethics office" means the Judicial Ethics Committee.

(4) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purpose of section 208 of title 28,[1] and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 305 and the provisions of that section shall apply with respect to such documents and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (vi) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection, or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(ii) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $1,000.

(7) Any trust which is in existence prior to October 26, 1978, shall be considered a qualified blind trust if—

(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold is filed and made available to the public as provided under paragraph (5) of this subsection.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

(h) A report filed pursuant to subsection (c) or (d) of section 301 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) of this section with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

(As amended Pub. L. 96-19, §§ 3(a)(3), (b), 6, 7(a)-(c), (d)(2), (e), (f), 9(c)(3), (j), (q), June 13, 1979, 93 Stat. 39, 40-43.)

REFERENCES IN TEXT

Section 301(d) of this title, referred to in subsec. (c), is section 301(d) of Pub. L. 95-521, title III, Oct. 26, 1978, 92 Stat. 1851, which is classified to section 301(d) of this Appendix.

[1] So in original. Probably should be "title 18".

This title, referred to in subsec. (g), is title III of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1851, which is classified to sections 301 to 309 of this Appendix. For complete classification of Pub. L. 95-521 to the Code, see Tables.

AMENDMENTS

1979—Subsec. (a)(2)(B). Pub. L. 96-19, § 3(b)(2), struck out provision that a gift need not be so aggregated if, in an unusual case, a publicly available request for a waiver is granted.

Subsec. (a)(2)(D). Pub. L. 96-19, § 3(b)(1), added subpar. (D).

Subsec. (a)(7). Pub. L. 96-19, § 9(j), substituted "with respect to" for "with respect to;".

Subsec. (b). Pub. L. 96-19, § 9(c)(3), substituted provisions requiring that each report filed under section 301(a), (b), and (c) include a full and complete statement with respect to the information required by paragraphs (3) and (4) of subsec. (a) of this section as of the date specified in the report but which is less than thirty-one days before the filing date and paragraphs (6) and (7) of subsec. (a) of this section as of the filing date but for periods described in such paragraphs for provisions requiring that each report filed pursuant to section 301(a) and (b) include a full and complete statement with respect to the information required by paragraphs (3), (4), (6), and (7) of subsec. (a) of this section, as of the date, specified in the report, which shall be not more than thirty-one days prior to the date of filing.

Subsec. (e)(1)(B). Pub. L. 96-19, § 6(a)(1), (2), substituted "gifts received by a spouse which are" for "gift which" and "and a brief" for "or a brief".

Subsec. (e)(1)(C). Pub. L. 96-19, § 6(a)(3), (4), substituted "reimbursements received by a spouse which are" for "reimbursement which is" and "each such reimbursement" for "the reimbursement".

Subsec. (e)(1)(D). Pub. L. 96-19, § 6(a)(5), (b), in cl. (i) substituted "spouse's" for "spouse" and "no knowledge of," for "no knowledge of".

Subsec. (f)(3). Pub. L. 96-19, § 7(a)–(c), (d)(2), substituted in subpar. (A) "a broker, or an investment advisor" for "or a broker", in subpar. (A)(ii) "is not or" for "is or", and in the material following subpar. (D) "section 78c(a)(4) of title 15" for "section 78 of title 15" and inserted in material following subpar. (D) provisions defining "investment advisor".

Subsec. (f)(5). Pub. L. 96-19, § 7(e), (f), in subpar. (A)(ii) and (B) substituted "subsection (d) of this section" for "subsection (d)" and in subpar. (D) inserted "with respect to such documents and lists" following "that section shall apply".

Subsec. (f)(6)(B). Pub. L. 96-19, § 9(q), substituted "paragraph (3)(C), of this subsection" for "paragraph (3)(C) of this subsection,".

Subsec. (h). Pub. L. 96-19, § 3(a)(3), added subsec. (h).

§ 303. Filing of reports

(a) The Judicial Conference of the United States shall establish a Judicial Ethics Committee which shall be responsible for developing the forms for reporting the information required by this title and for receiving and making available, in accordance with the provisions of this title, the reports described in section 301.

(b) Each judicial officer and judicial employee shall file the report required by this title with the Committee and shall file a copy of such report as a public document with the clerk of the court on which he sits or serves.

(c) In the performance of its functions under this title, the Committee, with the approval of the Judicial Conference of the United States, shall—

(1) develop the necessary forms and promulgate such rules and regulations as may be necessary;

(2) monitor and investigate compliance with the requirements of this title;

(3) provide for the availability of reports as required by section 305;

(4) conduct, or cause to be conducted, the reviews required by section 306;

(5) cooperate with the Attorney General in enforcing the requirements of this title;

(6) submit to the Congress and the President recommendations for legislative revision of this title; and

(7) perform such other functions as may be assigned by the Judicial Conference of the United States.

(d) The Committee shall, within one hundred and twenty days after October 26, 1978, develop and, with the approval of the Judicial Conference of the United States, promulgate a regulation establishing a method or methods for readily determining, without the necessity for expert appraisal, the fair market value of assets required to be disclosed by this title.

(As amended Pub. L. 96-19, § 9(r), June 13, 1979, 93 Stat. 43.)

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1851, which is classified to sections 301 to 309 of this Appendix. For complete classification of Pub. L. 95-521 to the Code, see Tables.

AMENDMENTS

1979—Subsec. (c)(6). Pub. L. 96-19 substituted "revision of this title; and" for "revision of this title;".

§ 304. Failure to file or falsifying reports

(a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information that such individual is required to report pursuant to section 302. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(b) The Committee shall refer to the Attorney General the name of any individual the Committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or failed to file information required to be reported.

§ 305. Custody of and public access to reports

(a) The Committee shall make each report filed with it under this title available to the public in accordance with subsection (b) of this section.

(b)(1) The Committee shall, within fifteen days after any report is received by the Committee under this title, permit inspection by or furnish a copy of such report to any person requesting such inspection or copy. The Committee may require the requesting person to pay a reasonable fee in any amount which is found necessary to recover the cost of reproduction or

mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(2) Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person's name, occupation and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(c)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report received by the Committee shall be held in its custody and be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 301(b) and was not subsequently confirmed by the Senate, such reports shall be destroyed one year after the individual is no longer under consideration by the Senate unless needed in an ongoing investigation.

(As amended Pub. L. 96-19, § 8(c), June 13, 1979, 93 Stat. 41.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a) and (b), is title III of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1851, which is classified to sections 301 to 309 of this Appendix. For complete classification of Pub. L. 95-521 to the Code, see Tables.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-19 designated existing provisions as par. (1) and added par. (2).

§ 306. Compliance procedures

(a) The Committee shall establish procedures for the review of reports filed with it under this title to determine whether the reports are filed in a timely manner, are complete, and are in proper form. In the event a determination is made that a report is not so filed, the Committee shall so inform the reporting individual and direct him to take all necessary corrective action.

(b) Such procedures shall include provisions for conducting a review each year of financial statements filed in that year by judicial officers and employees to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review.

REFERENCES IN TEXT

This title, referred to in subsec. (a), is title III of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1851, which is classified to sections 301 to 309 of this Appendix. For complete classification of Pub. L. 95-521 to the Code, see Tables.

§ 307. Additional requirements

(a) Nothing in this title shall be construed to prevent the Committee, with the approval of the Judicial Conference of the United States, from requiring officers or employees of the judicial branch not covered by this title to submit confidential financial statements.

(b) The Committee, with the approval of the Judicial Conference, may require disclosure, in the reports filed pursuant to subsections (a) and (c) of section 302, of gifts received by a dependent child of a reporting individual if the information required to be disclosed does not exceed that which must be reported by a spouse of a reporting individual under this title.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law or regulation.

(d) The provisions of this title requiring the reporting of information shall not supersede the requirements of section 7342 of title 5.

REFERENCES IN TEXT

This title, referred to in subsecs. (a), (b), and (d), is title III of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1851, which is classified to sections 301 to 309 of this Appendix. For complete classification of Pub. L. 95-521 to the Code, see Tables.

This Act, referred to in subsec. (c), means Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, known as the Ethics in Government Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 2, The Congress, and Tables.

§ 308. Definitions

For the purposes of this title, the term—

(1) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in prop-

erty; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(3) "gift" means a payment, advance, forebearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government;

(D) food and beverages consumed at banquets, receptions, or similar events; or

(E) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

(4) "honoraria" has the meaning given such term in the Federal Election Campaign Act of 1971 [2 U.S.C. 431 et seq.].

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of title 26;

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government;

(B) required to be reported by the reporting individual under section 7342 of title 5; or

(C) required to be reported under section 434 of title 2;

(9) "judicial officer" means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals; United States district courts, including the district courts in the Canal Zone, Guam, and the Virgin Islands; Court of Claims; Court of Customs and Patent Appeals; Customs Court; Tax Court; courts of the District of Columbia and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior; and

(10) "judicial employee" means any employee of the judicial branch of the Government or of the Tax Court who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who receives compensation at a rate at or in excess of the minimum rate prescribed for grade 16 of the General Schedule under section 5332 of title 5.

(As amended Pub. L. 96-19, §§ 4(c), 9(d), June 13, 1979, 93 Stat. 40.)

REFERENCES IN TEXT

This title, referred to in provision preceding par. (1), is title III of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1851, which is classified to sections 301 to 309 of this Appendix. For complete classification of Pub. L. 95-521 to the Code, see Tables.

The Federal Election Campaign Act of 1971, referred to in par. (4), is Pub. L. 92-225, Feb. 7, 1972, 86 Stat. 3, as amended, which is classified principally to chapter 14 (§ 431 et seq.) of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 431 of Title 2 and Tables.

AMENDMENTS

1979—Par. (1). Pub. L. 96-19, § 9(d), substituted "gross income derived from business (and net income if the individual elects to include it)" for "net and gross income derived from business".

Par. (9). Pub. L. 96-19, § 4(c)(1), inserted "Tax Court;" following "Customs Court;".

Par. (10). Pub. L. 96-19, § 4(c)(2), inserted "or of the Tax Court" following "Government".

§ 309. Effective Date

This title shall take effect on January 1, 1979, and the reports filed under section 301(c) on May 15, 1979, shall include information for calendar year 1978.

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1851, which is classified to sections 301 to 309 of this Appendix. For complete classification of Pub. L. 95-521 to the Code, see Tables.

FEDERAL RULES OF APPELLATE PROCEDURE

(As amended to January 1, 1980)

TITLE I—APPLICABILITY OF RULES

Rule 1. Scope of Rules

(a) Scope of Rules

These rules govern procedure in appeals to United States courts of appeals from the United States district courts and the United States Tax Court; in proceedings in the courts of appeals for review or enforcement of orders of administrative agencies, boards, commissions and officers of the United States; and in applications for writs or other relief which a court of appeals or a judge thereof is competent to give. When these rules provide for the making of a motion or application in the district court, the procedure for making such motion or application shall be in accordance with the practice of the district court.

[*See main edition for text of* (b) *and* (c)]

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

The Federal Rules of Appellate Procedure were designed as an integrated set of rules to be followed in appeals to the courts of appeals, covering all steps in the appellate process, whether they take place in the district court or in the court of appeals, and with their adoption Rules 72-76 of the F.R.C.P. were abrogated. In some instances, however, the F.R.A.P. provide that a motion or application for relief may, or must, be made in the district court. See Rules 4(a), 10(b), and 24. The proposed amendment would make it clear that when this is so the motion or application is to be made in the form and manner prescribed by the F.R.C.P. or F.R.Cr.P. and local rules relating to the form and presentation of motions and is not governed by Rule 27 of the F.R.A.P. See Rule 7(b) of the F.R.C.P. and Rule 47 of the F.R.Cr.P.

TITLE II—APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

Rule 3. Appeal as of Right—How Taken

[*See main edition for text of* (a) *and* (b)]

(c) Content of the Notice of Appeal

The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of the Notice of Appeal

The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address; and the clerk shall transmit forthwith a copy of the notice of appeal and of the docket entries to the clerk of the court of appeals named in the notice. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon him, either by personal service or by mail addressed to him. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

(e) Payment of Fees

Upon the filing of any separate or joint notice of appeal from the district court, the appellant shall pay to the clerk of the district court such fees as are established by statute, and also the docket fee prescribed by the Judicial Conference of the United States, the latter to be received by the clerk of the district court on behalf of the court of appeals.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

Subdivision (c). The proposed amendment would add the last sentence. Because of the fact that the timely filing of the notice of appeal has been characterized as jurisdictional (See, e. g., *Brainerd* v. *Beal* (C.A. 7th, 1974) 498 F.2d 901, in which the filing of a notice of appeal one day late was fatal), it is important that the right to appeal not be lost by mistakes of mere form. In a number of decided cases it has been held that so long as the function of notice is met by the filing of a paper indicating an intention to appeal, the substance of the rule has been complied with. See, e. g., *Cobb* v. *Lewis* (C.A. 5th, 1974) 488 F.2d 41; *Holley* v. *Capps* (C.A. 5th, 1972) 468 F.2d 1366. The proposed amendment would give recognition to this practice.

When a notice of appeal is filed, the clerk should ascertain whether any judgment designated therein has been entered in compliance with Rules 58 and 79(a) of the F.R.C.P. See Note to Rule 4(a)(6), infra.

Subdivision (d). The proposed amendment would extend to civil cases the present provision applicable to criminal cases, habeas corpus cases, and proceedings under 28 U.S.C. § 2255, requiring the clerk of the district court to transmit to the clerk of the court of appeals a copy of the notice of appeal and of the docket entries, which should include reference to compliance with the requirements for payment of fees. See Note to (e), infra.

This requirement is the initial step in proposed changes in the rules to place in the court of appeals an increased practical control over the early steps in the appeal.

Subdivision (e). Proposed new Rule 3(e) represents the second step in shifting to the court of appeals the control of the early stages of an appeal. See Note to Rule 3(d) above. Under the present rules the payment of the fee prescribed by 28 U.S.C. 1917 is not covered. Under the statute, however, this fee is paid to the clerk of the district court at the time the notice of appeal is filed. Under present Rule 12, the "docket fee" fixed by the Judicial Conference of the United States under 28 U.S.C. § 1913 must be paid to the clerk of the court of appeals within the time fixed for transmission of the record, ". . . and the clerk shall thereupon enter the appeal upon the docket."

Under the proposed new Rule 3(e) both fees would be paid to the clerk of the district court at the time the notice of appeal is filed, the clerk of the district court receiving the docket fee on behalf of the court of appeals.

In view of the provision in Rule 3(a) that "[f]ailure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal," the case law indicates that the failure to prepay the statutory filing fee does not constitute a jurisdictional defect. See *Parissi* v. *Telechron*, 349 U.S. 46 (1955); *Gould* v. *Members of N. J. Division of Water Policy & Supply*, 555 F.2d 340 (3d Cir. 1977). Similarly, under present Rule 12, failure to pay the docket fee within the time prescribed may be excused by the court of appeals. See, e. g., *Walker* v. *Mathews*, 546 F.2d 814 (9th Cir. 1976). Proposed new Rule 3(e) adopts the view of these cases, requiring that both fees be paid at the time the notice of appeal is filed, but subject to the provisions of Rule 26(b) preserving the authority of the court of appeals to permit late payment.

Rule 4. Appeal as of Right—When Taken

(a) Appeals in Civil Cases

(1) In a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

(2) Except as provided in (a)(4) of this Rule 4, a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

(4) If a timely motion under the Federal Rules of Civil Procedure is filed in the district court by any party: (i) for judgment under Rule 50(b); (ii) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) under Rule 59 to alter or amend the judgment; or (iv) under Rule 59 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) A judgment or order is entered within the meaning of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

[*See main edition for text of (b)*]

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

Subdivision (a)(1). The words "(including a civil action which involves an admiralty or maritime claim and a proceeding in bankruptcy or a controversy arising therein)," which appear in the present rule are struck out as unnecessary and perhaps misleading in suggesting that there may be other categories that are not either civil or criminal within the meaning of Rule 4(a) and (b).

The phrases "within 30 days of such entry" and "within 60 days of such entry" have been changed to read "after" instead of "or." The change is for clarity only, since the word "of" in the present rule appears to be used to mean "after." Since the proposed amended rule deals directly with the premature filing of a notice of appeal, it was thought useful to emphasize the fact that except as provided, the period during which a notice of appeal may be filed is the 30 days, or 60 days as the case may be, following the entry of the judgment or order appealed from. See Notes to Rule 4(a)(2) and (4), below.

Subdivision (a)(2). The proposed amendment to Rule 4(a)(2) would extend to civil cases the provisions of Rule 4(b), dealing with criminal cases, designed to avoid the loss of the right to appeal by filing the notice of appeal prematurely. Despite the absence of such a provision in Rule 4(a) the courts of appeals quite generally have held premature appeals effective. See, e. g., *Matter of Grand Jury Empanelled Jan. 21, 1975*, 541 F.2d 373 (3d Cir. 1976); *Hodge* v. *Hodge*, 507 F.2d 87 (3d Cir. 1976); *Song Jook Suh* v. *Rosenberg*, 437 F.2d 1098 (9th Cir. 1971); *Ruby* v. *Secretary of the Navy*, 365 F.2d 385 (9th Cir. 1966); *Firchau* v. *Diamond Nat'l Corp.*, 345 F.2d 469 (9th Cir. 1965).

The proposed amended rule would recognize this practice but make an exception in cases in which a post trial motion has destroyed the finality of the judgment. See Note to Rule 4(a)(4) below.

Subdivision (a)(4). The proposed amendment would make it clear that after the filing of the specified post trial motions, a notice of appeal should await disposition of the motion. Since the proposed amendments to Rules 3, 10, and 12 contemplate that immediately upon the filing of the notice of appeal the fees will be paid and the case docketed in the court of appeals, and the steps toward its disposition set in motion, it would be undesirable to proceed with the appeal while the district court has before it a motion the granting of which would vacate or alter the judgment appealed from. See, e. g., *Kieth* v. *Newcourt,* 530 F.2d 826 (8th Cir. 1976). Under the present rule, since docketing may not take place until the record is transmitted, premature filing is much less likely to involve waste effort. See, e. g. *Stokes* v. *Peyton's Inc.,* 508 F.2d 1287 (5th Cir. 1975). Further, since a notice of appeal filed before the disposition of a post trial motion, even if it were treated as valid for purposes of jurisdiction, would not embrace objections to the denial of the motion, it is obviously preferable to postpone the notice of appeal until after the motion is disposed of.

The present rule, since it provides for the "termination" of the "running" of the appeal time, is ambiguous in its application to a notice of appeal filed prior to a post trial motion filed within the 10 day limit. The amendment would make it clear that in such circumstances the appellant should not proceed with the appeal during pendency of the motion but should file a new notice of appeal after the motion is disposed of.

Subdivision (a)(5). Under the present rule it is provided that upon a showing of excusable neglect the district court at any time may extend the time for the filing of a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by the rule, but that if the application is made after the original time has run, the order may be made only on motion with such notice as the court deems appropriate.

A literal reading of this provision would require that the extension be ordered and the notice of appeal filed within the 30 day period, but despite the surface clarity of the rule, it has produced considerable confusion. See the discussion by Judge Friendly in *In re Orbitek,* 520 F.2d 358 (2d Cir. 1975). The proposed amendment would make it clear that a motion to extend the time must be filed no later than 30 days after the expiration of the original appeal time, and that if the motion is timely filed the district court may act upon the motion at a later date, and may extend the time not in excess of 10 days measured from the date on which the order granting the motion is entered.

Under the present rule there is a possible implication that prior to the time the initial appeal time has run, the district court may extend the time on the basis of an informal application. The amendment would require that the application must be made by motion, though the motion may be made ex parte. After the expiration of the initial time a motion for the extension of the time must be made in compliance with the F.R.C.P. and local rules of the district court. See Note to proposed amended Rule 1, supra. And see Rules 6(d), 7(b) of the F.R.C.P.

The proposed amended rule expands to some extent the standard for the grant of an extension of time. The present rule requires a "showing of excusable neglect." While this was an appropriate standard in cases in which the motion is made after the time for filing the notice of appeal has run, and remains so, it has never fit exactly the situation in which the appellant seeks an extension before the expiration of the initial time. In such a case "good cause," which is the standard that is applied in the granting of other extensions of time under Rule 26(b) seems to be more appropriate.

Subdivision (a)(6). The proposed amendment would call attention to the requirement of Rule 58 of the F.R.C.P. that the judgment constitute a separate document. See *United States* v. *Indrelunas,* 411 U.S. 216 (1973). When a notice of appeal is filed, the clerk should ascertain whether any judgment designated therein has been entered in compliance with Rules 58 and 79(a) and if not, so advise all parties and the district judge. While the requirement of Rule 48 is not jurisdictional, (see *Bankers Trust Co.* v. *Mallis,* 431 U.S. 928 (1977)), compliance is important since the time for the filing of a notice of appeal by other parties is measured by the time at which the judgment is properly entered.

Rule 5. Appeals by Permission Under 28 U.S.C. § 1292(b)

[*See main edition for text of* (a) *to* (c)]

(d) Grant of Permission; Cost Bond; Filing of Record

Within 10 days after the entry of an order granting permission to appeal the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon receipt of such notice the clerk of the court of appeals shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rules 11 and 12(b). A notice of appeal need not be filed.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

The proposed amendment adapts to the practice in appeals from interlocutory orders under 28 U.S.C. § 1292(b) the provisions of proposed Rule 3(e) above, requiring payment of all fees in the district court upon the filing of the notice of appeal. See Note to proposed amended Rule 3(e), supra.

Rule 6. Appeals by Allowance in Bankruptcy Proceedings

[*See main edition for text of* (a) *to* (c)]

(d) Allowance of the Appeal; Cost Bond; Filing of Record

Within 10 days after the entry of an order granting permission to appeal the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon receipt of such notice the clerk of the court of appeals shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rules 11 and 12(b). A notice of appeal need not be filed.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

The proposed amendment adapts to the practice in appeals by allowance in bankruptcy proceedings the

provisions of proposed Rule 3(e) above, requiring payment of all fees in the district court at the time of the filing of the notice of appeal. See Note to Rule 3(e), supra.

Rule 7. Bond for Costs on Appeal in Civil Cases

The district court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

The amendment would eliminate the provision of the present rule that requires the appellant to file a $250 bond for costs on appeal at the time of filing his notice of appeal. The $250 provision was carried forward in the F.R.App.P. from former Rule 73(c) of the F.R.Civ.P., and the $250 figure has remained unchanged since the adoption of that rule in 1937. Today it bears no relationship to actual costs. The amended rule would leave the question of the need for a bond for costs and its amount in the discretion of the court.

Rule 10. The Record on Appeal

[See main edition for text of (a)]

(b) The Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript Is Ordered

(1) Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary, subject to local rules of the courts of appeals. The order shall be in writing and within the same period a copy shall be filed with the clerk of the district court. If funding is to come from the United States under the Criminal Justice Act, the order shall so state. If no such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.

(2) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) Unless the entire transcript is to be included the appellant shall, within the 10 days time provided in (b)(1) of this Rule 10, file a statement of the issues he intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

[See main edition for text of (c) to (e)]

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

The proposed amendments to Rule 10(b) would require the appellant to place with the reporter a written order for the transcript of proceedings and file a copy with the clerk, and to indicate on the order if the transcript is to be provided under the Criminal Justice Act. If the appellant does not plan to order a transcript of any of the proceedings, he must file a certificate to that effect. These requirements make the appellant's steps in readying the appeal a matter of record and give the district court notice of requests for transcripts at the expense of the United States under the Criminal Justice Act. They are also the third step in giving the court of appeals some control over the production and transmission of the record. See Note to Rules 3(d)(e) above and Rule 11 below.

In the event the appellant orders no transcript, or orders a transcript of less than all the proceedings, the procedure under the proposed amended rule remains substantially as before. The appellant must serve on the appellee a copy of his order or in the event no order is placed, of the certificate to that effect, and a statement of the issues he intends to present on appeal, and the appellee may thereupon designate additional parts of the transcript to be included, and upon appellant's refusal to order the additional parts, may either order them himself or seek an order requiring the appellant to order them. The only change proposed in this procedure is to place a 10 day time limit on motions to require the appellant to order the additional portions.

Rule 10(b) is made subject to local rules of the courts of appeals in recognition of the practice in some circuits in some classes of cases, e. g., appeals by indigents in criminal cases after a short trial, of ordering immediate preparation of a complete transcript, thus making compliance with the rule unnecessary.

Rule 11. Transmission of the Record

(a) Duty of Appellant

After filing the notice of appeal the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of Rule 10(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. A single record shall be transmitted.

(b) Duty of Reporter to Prepare and File Transcript; Notice to Court of Appeals; Duty of Clerk to Transmit the Record

Upon receipt of an order for a transcript, the reporter shall acknowledge at the foot of the order the fact that he has received it and the date on which he expects to have the transcript completed and shall transmit the order, so endorsed, to the clerk of the court of appeals. If the transcript cannot be completed within 30 days of receipt of the order the reporter shall request an extension of time from the clerk of the court of appeals and the action of the clerk of the court of appeals shall be entered on the

docket and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the clerk of the court of appeals shall notify the district judge and take such other steps as may be directed by the court of appeals. Upon completion of the transcript the reporter shall file it with the clerk of the district court and shall notify the clerk of the court of appeals that he has done so.

When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it forthwith to the clerk of the court of appeals. The clerk of the district court shall number the documents comprising the record and shall transmit with the record a list of documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record as the court of appeals may designate by local rule, shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the court of appeals. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(c) Temporary Retention of Record in District Court for Use in Preparing Appellate Papers

Notwithstanding the provisions of (a) and (b) of this Rule 11, the parties may stipulate, or the district court on motion of any party may order, that the clerk of the district court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event the clerk of the district court shall certify to the clerk of the court of appeals that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the district court to transmit the record.

(d) [Extension of Time for Transmission of the Record; Reduction of Time] [Abrogated]

[See main edition for text of (e) to (g)]

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTE OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

Under present Rule 11(a) it is provided that the record shall be transmitted to the court of appeals within 40 days after the filing of the notice of appeal. Under present Rule 11(d) the district court, on request made during the initial time or any extension thereof, and cause shown, may extend the time for the transmission of the record to a point not more than 90 days after the filing of the first notice of appeal. If the district court is without authority to grant a request to extend the time, or denies a request for extension, the appellant may make a motion for extension of time in the court of appeals. Thus the duty to see that the record is transmitted is placed on the appellant. Aside from ordering the transcript within the time prescribed the appellant has no control over the time at which the record is transmitted, since all steps beyond this point are in the hands of the reporter and the clerk. The proposed amendments recognize this fact and place the duty directly on the reporter and the clerk. After receiving the written order for the transcript (See Note to Rule 10(b) above), the reporter must acknowledge its receipt, indicate when he expects to have it completed, and mail the order so endorsed to the clerk of the court of appeals. Requests for extensions of time must be made by the reporter to the clerk of the court of appeals and action on such requests is entered on the docket. Thus from the point at which the transcript is ordered the clerk of the court of appeals is made aware of any delays. If the transcript is not filed on time, the clerk of the court of appeals will notify the district judge.

Present Rule 11(b) provides that the record shall be transmitted when it is "complete for the purposes of the appeal." The proposed amended rule continues this requirement. The record is complete for the purposes of the appeal when it contains the original papers on file in the clerk's office, all necessary exhibits, and the transcript, if one is to be included. *Cf.* present Rule 11(c). The original papers will be in the custody of the clerk of the district court at the time the notice of appeal is filed. See Rule 5(e) of the F.R.C.P. The custody of exhibits is often the subject of local rules. Some of them require that documentary exhibits must be deposited with the clerk. See Local Rule 13 of the Eastern District of Virginia. Others leave exhibits with counsel, subject to order of the court. See Local Rule 33 of the Northern District of Illinois. If under local rules the custody of exhibits is left with counsel, the district court should make adequate provision for their preservation during the time during which an appeal may be taken, the prompt deposit with the clerk of such as under Rule 11(b) are to be transmitted to the court of appeals, and the availability of others in the event that the court of appeals should require their transmission. Cf. Local Rule 11 of the Second Circuit.

Usually the record will be complete with the filing of the transcript. While the proposed amendment requires transmission "forthwith" when the record is complete, it was not designed to preclude a local requirement by the court of appeals that the original papers and exhibits be transmitted when complete without awaiting the filing of the transcript.

The proposed amendments continue the provision in the present rule that documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted without direction by the parties or by the court of appeals, and the requirement that the parties make special arrangements for transmission and receipt of exhibits of unusual bulk or weight. In addition, they give recognition to local rules that make transmission of other record items subject to order of the court of appeals. See Local Rule 4 of the Seventh Circuit.

Rule 12. Docketing the Appeal; Filing of the Record

(a) Docketing the Appeal

Upon receipt of the copy of the notice of appeal and of the docket entries, transmitted by the clerk of the district court pursuant to Rule 3(d), the clerk of the court of appeals shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the district court, with the appellant identified as such, but if such title does not contain the name of the appellant, his name, identified as appellant, shall be added to the title.

(b) Filing the Record, Partial Record, or Certificate

Upon receipt of the record transmitted pursuant to Rule 11(b), or the partial record transmitted pursuant to Rule 11(e), (f), or (g), or the clerk's certificate under Rule 11(c), the clerk of

the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed.

(c) [Dismissal for Failure of Appellant to Cause Timely Transmission or to Docket Appeal] [Abrogated]

(As amended Apr. 1, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

Subdivision (a). Under present Rule 12(a) the appellant must pay the docket fee within the time fixed for the transmission of the record, and upon timely payment of the fee, the appeal is docketed. The proposed amendment takes the docketing out of the hands of the appellant. The fee is paid at the time the notice of appeal is filed and the appeal is entered on the docket upon receipt of a copy of the notice of appeal and of the docket entries, which are sent to the court of appeals under the provisions of Rule 3(d). This is designed to give the court of appeals control of its docket at the earliest possible time so that within the limits of its facilities and personnel it can screen cases for appropriately different treatment, expedite the proceedings through prehearing conferences or otherwise, and in general plan more effectively for the prompt disposition of cases.

Subdivision (b). The proposed amendment conforms the provision to the changes in Rule 11.

TITLE III—REVIEW OF DECISIONS OF THE UNITED STATES TAX COURT

Rule 13. Review of Decision of the Tax Court

(a) How Obtained; Time for Filing Notice of Appeal

Review of a decision of the United States Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered.

The running of the time for appeal is terminated as to all parties by a timely motion to vacate or revise a decision made pursuant to the Rules of Practice of the Tax Court. The full time for appeal commences to run and is to be computed from the entry of an order disposing of such motion, or from the entry of decision, whichever is later.

[*See main edition for text of* (b) *to* (d)]

(As amended Apr. 1, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

The proposed amendment reflects the change in the title of the Tax Court to "United States Tax Court." See 26 U.S.C. § 7441.

TITLE VI—HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

Rule 24. Proceedings in Forma Pauperis

[*See main edition for text of* (a)]

(b) Leave to Proceed on Appeal or Review in Forma Pauperis in Administrative Agency Proceedings

A party to a proceeding before an administrative agency, board, commission or officer (including, for the purpose of this rule, the United States Tax Court) who desires to proceed on appeal or review in a court of appeals in forma pauperis, when such appeal or review may be had directly in a court of appeals, shall file in the court of appeals a motion for leave so to proceed, together with the affidavit prescribed by the first paragraph of (a) of this Rule 24.

[*See main edition for text of* (c)]

(As amended Apr. 1, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

The proposed amendment reflects the change in the title of the Tax Court to "United States Tax Court." See 26 U.S.C. § 7441.

TITLE VII—GENERAL PROVISIONS

Rule 27. Motions

[*See main edition for text of* (a)]

(b) Determination of Motions for Procedural Orders

Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b), may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may by application to the court request consideration, vacation or modification of such action.

[*See main edition for text of* (c) *and* (d)]

(As amended Apr. 1, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

The proposed amendment would give sanction to local rules in a number of circuits permitting the clerk to dispose of specified types of procedural motions.

Rule 28. Briefs

[*See main edition for text of* (a) *to* (f)]

(g) Length of Briefs

Except by permission of the court, or as specified by local rule of the court of appeals, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc.

[*See main edition for text of* (h) *and* (i)]

(j) Citation of Supplemental Authorities

When pertinent and significant authorities come to the attention of a party after his brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without ar-

gument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

The proposed amendment eliminates the distinction appearing in the present rule between the permissible length in pages of printed and typewritten briefs, investigation of the matter having disclosed that the number of words on the printed page is little if any larger than the number on a page typed in standard elite type.

The provision is made subject to local rule to permit the court of appeals to require that typewritten briefs be typed in larger type and permit a correspondingly larger number of pages.

Subdivision (j). Proposed new Rule 28(j) makes provision for calling the court's attention to authorities that come to the party's attention after the brief has been filed. It is patterned after the practice under local rule in some of the circuits.

Rule 34. Oral Argument

(a) In General; Local Rule

Oral argument shall be allowed in all cases unless pursuant to local rule a panel of three judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. Any such local rule shall provide any party with an opportunity to file a statement setting forth the reasons why, in his opinion, oral argument should be heard. A general statement of the criteria employed in the administration of such local rule shall be published in or with the rule and such criteria shall conform substantially to the following minimum standard:

Oral argument will be allowed unless

(1) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement

The clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

[*See main edition for text of* (c) *to* (g)]

(As amended Apr. 1, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

The proposed amendment, patterned after the recommendations in the Report of the Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations for Change, 1975, created by Public Law 489 of the 92nd Cong. 2nd Sess., 86 Stat. 807, sets forth general principles and minimum standards to be observed in formulating any local rule.

Rule 35. Determination of Causes by the Court in Banc

[*See main edition for text of* (a)]

(b) Suggestion of a Party for Hearing or Rehearing in Banc

A party may suggest the appropriateness of a hearing or rehearing in banc. No response shall be filed unless the court shall so order. The clerk shall transmit any such suggestion to the members of the panel and the judges of the court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard in banc unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

(c) Time for Suggestion of a Party for Hearing or Rehearing in Banc; Suggestion Does Not Stay Mandate

If a party desires to suggest that an appeal be heard initially in banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for a hearing in banc must be made within the time prescribed by Rule 40 for filing a petition for rehearing, whether the suggestion is made in such petition or otherwise. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the court of appeals or stay the issuance of the mandate.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

Under the present rule there is no specific provision for a response to a suggestion that an appeal be heard in banc. This has led to some uncertainty as to whether such a response may be filed. The proposed amendment would resolve this uncertainty.

While the present rule provides a time limit for suggestions for rehearing in banc, it does not deal with the timing of a request that the appeal be heard in banc initially. The proposed amendment fills this gap as well, providing that the suggestion must be made by the date of which the appellee's brief is filed.

Provision is made for circulating the suggestions to members of the panel despite the fact that senior judges on the panel would not be entitled to vote on whether a suggestion will be granted.

Rule 39. Costs

[*See main edition for text of* (a) *and* (b)]

(c) Costs of Briefs, Appendices, and Copies of Records

Unless otherwise provided by local rule, the cost of printing, or otherwise producing necessary copies of briefs, appendices, and copies of records authorized by Rule 30(f) shall be taxable in the court of appeals at rates not higher than those generally charged for such work in the area where the clerk's office is located.

(d) Bill of Costs; Objections; Costs to be Inserted in Mandate or Added Later

A party who desires such costs to be taxed shall state them in an itemized and verified bill

of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment. Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court. The clerk shall prepare and certify an itemized statement of costs taxed in the court of appeals for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the clerk of the court of appeals to the clerk of the district court.

[*See main edition for text of (e)*]

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

Subdivision (c). The proposed amendment would permit variations among the circuits in regulating the maximum rates taxable as costs for printing or otherwise reproducing briefs, appendices, and copies of records authorized by Rule 30(f). The present rule has had a different effect in different circuits depending upon the size of the circuit, the location of the clerk's office, and the location of other cities. As a consequence there was a growing sense that strict adherence to the rule produces some unfairness in some of the circuits and the matter should be made subject to local rule.

Subdivision (d). The present rule makes no provision for objections to a bill of costs. The proposed amendment would allow 10 days for such objections. Cf. Rule 54(d) of the F.R.C.P. It provides further that the mandate shall not be delayed for taxation of costs.

Rule 40. Petition for Rehearing

(a) Time for Filing; Content; Answer; Action by Court if Granted

A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order or by local rule. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) Form of Petition; Length

The petition shall be in a form prescribed by Rule 32(a), and copies shall be served and filed as prescribed by Rule 31(b) for the service and filing of briefs. Except by permission of the court, or as specified by local rule of the court of appeals, a petition for rehearing shall not exceed 15 pages.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES

1979 NOTE

Subdivision (a). The Standing Committee added to the first sentence of Rule 40(a) the words "or by local rule," to conform to current practice in the circuits. The Standing Committee believes the change noncontroversial.

Subdivision (b). The proposed amendment would eliminate the distinction drawn in the present rule between printed briefs and those duplicated from typewritten pages in fixing their maximum length. See Note to Rule 28. Since petitions for rehearing must be prepared in a short time, making typographic printing less likely, the maximum number of pages is fixed at 15, the figure used in the present rule for petitions duplicated by means other than typographic printing.

APPENDIX OF FORMS

Form 1. Notice of Appeal to a Court of Appeals from a Judgment or Order of a District Court

United States District Court for the ————

District of ————

File Number ————

A. B., PLAINTIFF
v.
C. D., DEFENDANT
} Notice of Appeal

Notice is hereby given that C. D., defendant above named hereby appeals to the United States Court of Appeals for the ———— Circuit (from the final judgment) (from the order (describing it)) entered in this action on the —— day of ————, 19—.

(S) ————————————

————————————

(Address)

Attorney for C. D.

The name of the Tax Court of the United States has been changed to United States Tax Court by Pub. L. 91-172, § 951, Dec. 30, 1969, 83 Stat. 730 (26 U.S.C. § 7441).

Form 2. Notice of Appeal to a Court of Appeals from a Decision of the Tax Court

TAX COURT OF THE UNITED STATES
WASHINGTON, D.C.

A. B., PETITIONER
v.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT } Docket No. ———

Notice of Appeal

Notice is hereby given that A. B. hereby appeals to the United States Court of Appeals for the ———— Circuit from [that part of] the decision of this court entered in the above captioned proceeding on the ——— day of ————, 19—. [relating to ————].

(S) ————————————

————————————
(Address)
Counsel for A. B.

Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer

United States Court of Appeals for the ——— Circuit

A.B., PETITIONER
v.
XYZ COMMISSION, RESPONDENT } Petition for Review

A. B. hereby petitions the court for review of the Order of the XYZ Commission (describe the order) entered on ———, 19—.

————————————,
Attorney for Petitioner.
Address: ————————

Form 4. Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis

United States District Court for the ——— District of ———

UNITED STATES OF AMERICA
v.
A. B. } No. ——

Affidavit in Support of Motion to Proceed on Appeal in Forma Pauperis

I, ———————— being first duly sworn, depose and say that I am the ————, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?
   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?
   a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.
3. Do you own any cash or checking or savings account?
   a. If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
   a. If the answer is yes, describe the property and state its approximate value.
5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

————————————

SUBSCRIBED AND SWORN TO before me this ——— day of ————, 19—.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

————————————,
District Judge.

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

(a) When presented

A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, except when service is made under Rule 4(e) and a different time is prescribed in the order of court under the statute of the United States or in the statute or rule of court of the state. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

CODIFICATION

Subd. (a) of this rule is set out in this supplement to correct a typographical error.

RULES OF EVIDENCE FOR UNITED STATES COURTS AND MAGISTRATES

(As amended to January 1, 1980)

ARTICLE IV—RELEVANCY AND ITS LIMITS

Rule
412. Rape cases; relevance of victim's past behavior.

AMENDMENTS

1978—Pub. L. 95-540, § 2(b), Oct. 28, 1978, 92 Stat. 2047, added item 412.

ARTICLE IV—RELEVANCY AND ITS LIMITS

Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements

PROPOSED AMENDMENT

An amendment of this rule was proposed by the United States Supreme Court and transmitted to Congress on Apr. 30, 1979, to become effective Aug. 1, 1979. Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided in part that the proposed amendment shall not take effect until Dec. 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier.

As thus proposed, this rule would read as follows:

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) a plea of nolo contendere;

(3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 412. Rape Cases; Relevance of Victim's Past Behavior

(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behavior of an alleged victim of such rape or assault is not admissible.

(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is—

(1) admitted in accordance with subdivisions (c)(1) and (c)(2) and is constitutionally required to be admitted; or

(2) admitted in accordance with subdivision (c) and is evidence of—

(A) past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which rape or assault is alleged.

(c)(1) If the person accused of committing rape or assault with intent to commit rape intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subdivision

(b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which rape or assault with intent to commit rape is alleged.

(Added Pub. L. 95-540, § 2(a), Oct. 28, 1978, 92 Stat. 2046.)

EFFECTIVE DATE

Section 3 of Pub. L. 95-540 provided that: "The amendments made by this Act [enacting this rule] shall apply to trials which begin more than thirty days after the date of the enactment of this Act [Oct. 28, 1978]."

ARTICLE XI—MISCELLANEOUS RULES

Rule 1101. Applicability of Rules

(a) *Courts and magistrates.* These rules apply to the United States district courts, the United States bankruptcy courts, the District Court of Guam, the District Court of the Virgin Islands, the District Court for the District of the Canal Zone, the United States courts of appeals, the Court of Claims, and to United States magistrates, in the actions, cases, and proceedings and to the extent hereinafter set forth. The terms "judge" and "court" in these rules include United States magistrates and commissioners of the Court of Claims.

(b) *Proceedings generally.* These rules apply generally to civil actions and proceedings, including admiralty and maritime cases, to criminal cases and proceedings, to contempt proceedings except those in which the court may act summarily, and to proceedings and cases under title 11, United States Code.

[*See main edition for text of* (c) *to* (e)]

(As amended Pub. L. 95-598, title II, § 251, Nov. 6, 1978, 92 Stat. 2673.)

AMENDMENT EFFECTIVE APRIL 1, 1984

Pub. L. 95-598, title II, § 252, title IV, § 402(b), Nov. 6, 1978, 92 Stat. 2673, 2682, provided that, effective Apr. 1, 1984, subsec. (a) is amended by adding "the United States bankruptcy courts," after "the United States district courts,".

AMENDMENTS

1978—Subd. (a). Pub. L. 95-598, § 251(a), struck out ", referees in bankruptcy," following "United States magistrates".

Subd. (b). Pub. L. 95-598, § 251(b), substituted "title 11, United States Code" for "the Bankruptcy Act".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subds. (a) and (b) of this rule by section 251 of Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Dates note preceding section 101 of the Appendix to Title 11, Bankruptcy.

Rule 1103. Title

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-540, § 1, Oct. 28, 1978, 92 Stat. 2046, provided: "That this Act [enacting rule 412 of these rules and a provision set out as a note under rule 412 of these rules] may be cited as the 'Privacy Protection for Rape Victims Act of 1978'."

RULES OF THE COURT OF CLAIMS OF THE UNITED STATES

(As amended to January 1, 1980)

XI. TRIALS

Rule
134. Trial Judge's Decision.

XIV. WUNDERLICH ACT REVIEWS

166. Determination of Wunderlich Act Cases.

XV. APPEALS; TRANSFERS; AND REFERENCES

171. Scope of Rules.
172. Review of Board Orders and Decisions—How Obtained.
173. The Record on Review.
174. Filing of the Record.
175. Appendix to the Briefs.
176. Filing of Briefs.
177. Form, Contents, and Copies of Briefs, the Appendix, and Other Papers; References to Record in Briefs.
178. Motion for Summary Affirmance or to Dismiss the Appeal.
179. Offsets and Counterclaims.
180. Remand; Additional Evidence.
181. Referral to Trial Division.
182. Appeals From District Courts.
183. Transfers From District Courts.
184. Referral of Cases by the Comptroller General.

APPENDICES

F. Form of Petition for Review for Appeal Authorized by Law.

I. RULES; COURT; TRIAL JUDGES

Rule 14. Reference of cases to trial judges

(a) *Purpose of reference.* Unless otherwise ordered by the court, every case filed in the Court of Claims, except an appeal under Chapter XV, shall initially be referred to a trial judge for action pursuant to the provisions of Rule 13(b). The court may also refer to a trial judge for appropriate action any appeal filed pursuant to Chapter XV.

(b) *Duration of reference.*

[*See main edition for text of (1)*]

(2) *Suspension.* The filing of a dispositive motion in any case will suspend the reference for purposes of the particular motion: *Provided,* That the subsequent filing by the parties of a stipulation of settlement will terminate the suspension.

[*See main edition for text of (c) and (d)*]

III. PLEADINGS

Rule 41. Third-party practice

(a) *When third parties may be brought in.* (1) The court, on its own motion or on the motion of a party, may notify any person with legal capacity to sue and be sued and who is alleged to have an interest in the subject matter of any pending suit to appear as a party and assert his interest (if any) therein.

[*See main edition for text of (2) and (3); (b) to (g)*]

IV. MOTIONS

Rule 51. Motions and related papers

[*See main edition for text of (a) and (b)*]

(c) *Briefs; memoranda; affidavits.* (1) Any brief, memorandum of law, or affidavits submitted in support of any motion, or in support of any objections or response to a motion, shall be included in or attached to each copy of such motion, objections, or response. Every dispositive motion, as defined in Rule 52(a), shall be supported by the moving party's brief. As to any rule or regulation relied upon, see Rule 124(c).

(2) Briefs relating to dispositive motions shall conform to the pertinent requirements of Rule 144, dealing with the content and length of briefs: *Provided,* That in the case of cross-motions for summary judgment, for purposes of length the objecting or responding brief of the party who filed first shall be treated as a reply brief governed by Rule 144(e)(2).

[*See main edition for text of (d)*]

Rule 52. Motions; dispositive and procedural; objections and responses

[*See main edition for text of (a)*]

(b) *Time for filing; papers combined.*

[*See main edition for text of (1)*]

(2) *Reply briefs.* The moving party shall have 20 days from the date of the service of the objections or response to such motion within which to file a reply brief: *Provided,* That when cross-dispositive motions are pending, the party who filed first shall have 30 days from the serv-

ice on him of the crossmotion within which to file both his objections or response thereto and his reply to the objections or responses to the motion filed by him, and all such material shall be contained in the same document.

[*See main edition for text of* (c) *to* (e)]

Rule 53. Reference of procedural motions

[*See main edition for text of* (a) *and* (b)]

(c) *Review by the court.*

[*See main edition for text of* (1)]

(2) *Interlocutory review.* A party dissatisfied with a procedural order of the trial judge may request interlocutory review of the order in either of the following situations:

(i) When a trial judge is of the opinion that an order made by him pursuant to paragraph (b) of this rule involves an issue of controlling importance or an issue of deprivation of fundamental rights as to which there is substantial ground for difference of opinion and that the ultimate termination of the litigation may be materially advanced by permitting request for interlocutory review of his action, he shall so state in such order, and any party dissatisfied with the order may, in accordance with subparagraph (3) of this paragraph (c), request the court to review it. On motion, and for good cause shown, an order may be amended by the trial judge to include such a statement at any time while the reference of the case to him remains in effect. (See Rule 14(b).)

[*See main edition for text of* (ii)]

(3) *Request for interlocutory review.* (i) A request for review of a trial judge's procedural order under subparagraph (2) of this paragraph (c) shall be filed by the dissatisfied party with the clerk within 10 days from the date of (*a*) service of an order filed pursuant to subparagraph (1) of paragraph (b) of this rule, or (*b*) the announcement of an order in open court pursuant to subparagraph (2) of paragraph (b) of this rule, or (*c*) the service of an amendment made pursuant to the final sentence of subdivision (i) of subparagraph (2) of this paragraph (c), as may be appropriate.

(ii) The request for review shall contain (*a*) a statement of the facts necessary to an understanding of the controlling question determined by the order of the trial judge, or to an understanding of the extraordinary circumstances warranting interlocutory review by the court despite the absence from the order of a statement by the trial judge as indicated in subdivision (i) of subparagraph (2) of this paragraph (c); (*b*) a statement of the question or issue involved in the order; (*c*) a statement of the reasons why, in the opinion of the party requesting review, the order was erroneous and should be reversed or modified; and (*d*) all papers filed by the parties which relate to the subject matter of the trial judge's order, together with the order. (See Rule 214(c)(2)(ii) as to number of copies.)

(4) *Response to request for review.* Within 10 days after service of a request for review pursuant to subparagraph (3) of this paragraph (c), an adverse party may file an objection or response thereto.

(5) *Denial without prejudice.* The court may in its discretion deny any request for review pursuant to subparagraphs (2) and (3) of this paragraph (c) without prejudice to the right of the dissatisfied party to raise the error complained of when the case comes before the court for final judgment. (See Rule 12(d)(1) as to action by court.)

Rule 54. Reference of dispositive motions

(a) *Reference to trial judge.* In any case the court may by order refer an appeal or dispositive motion to the trial division for an opinion and recommendation for the conclusion of law by a trial judge.

(b) *Action by trial judge.*

[*See main edition for text of* (1) *and* (2)]

(3) *Review by the court.* (i) If any party is dissatisfied with the recommendation of the trial judge, he shall file with the clerk, within 30 days after service of notice of the filing of the trial judge's recommendation, a request for review of such recommendation and a brief specifying with particularity the matters which he wishes the court to consider in the review and discussing the issues involved. Any adverse party may file an answering brief within 30 days; and within 20 days after the filing of the answering brief, a reply brief may be filed. Briefs shall conform to Rule 144. (See Rule 214(d) as to duplication and number of copies.)

[*See main edition for text of* (ii) *and* (iii)]

XI. TRIALS

Rule 134. Trial judge's decision

[*See main edition for text of* (a) *to* (h)]

XII. NOTICE OF INTENTION; EXCEPTIONS; BRIEFS; ARGUMENT; JUDGMENT; REMAND

Rule 144. Content of briefs

(a) *Initial brief.* Except in briefs of 10 pages or less, the first brief due under Rule 143 (normally the plaintiff's brief) shall contain, under proper headings and arranged in the following order—

[*See main edition for text of* (1) *to* (6)]

(7) If an appendix is used, there shall be, at the beginning of the brief itself, a table of contents or index listing the various items in the appendix, including the number and description of every exhibit which is being reproduced, together with the number of the page of the appendix at which the item begins.

[*See main edition for text of* (b) *to* (e)]

XIV. WUNDERLICH ACT REVIEWS

Rule 161. Applicability of chapter

The ensuing rules in this chapter (Rules 161-68) shall apply to cases founded on contracts

containing disputes clauses subject, potentially, to review, in whole or in part, under the terms of the Wunderlich Act (68 Stat. 81, 41 U.S.C. §§ 321-22), and are designed to supplement the other rules of the court, particularly Rules 31-57 (Chapters III and IV, Pleadings and Motions), Rule 101 (Summary Judgment) and Rule 144 (Content of Briefs). To the extent that a party is entitled to relief outside the Wunderlich Act, a trial de novo, if required, on issues of fact shall be held in conformity with appropriate rules in other chapters.

Rule 162. Pleadings

[*See main edition for text of* (a)]

(b) *Sufficiency of petition.* (1) A motion to dismiss a petition for alleged failure to comply with the provisions of paragraph (a) of this rule shall be passed upon by the trial judge, who may recommend that the motion be granted, in which event his action shall be subject to review under Rule 53(c).

[*See main edition for text of* (2), *and* (c)]

Rule 166. Determination of Wunderlich Act cases

All motions under both Rules 163(a) and Rule 163(b) will hereafter be considered dispositive motions suspending the reference to the trial judge. However, in like manner to that provided in Rule 181, any party may suggest that the motion or motions be referred by the court to a trial judge, and the other party or parties may respond to that suggestion. The court will then determine whether to refer the motion or motions to a trial judge. Even if no such suggestion is submitted, the court may decide to refer the motion or motions to a trial judge. See Rule 54.

XV. APPEALS; TRANSFERS; AND REFERENCES

Rule 171. Scope of rules

(a) *Appeals covered.* These rules govern procedure in appeals under the Civil Service Reform Act of 1978, the Contract Disputes Act of 1978, and any other appeals which may be specifically authorized by law as appeals.

(b) *Rules not to affect jurisdiction.* These rules shall not be construed to extend or limit the jurisdiction of the court as established by law.

(c) *Other rules applicable.* The rules in this chapter are designed to supplement other rules of this court; and to the extent such other rules are not inconsistent with any provision of this chapter, they remain applicable.

REFERENCES IN TEXT

The Civil Service Reform Act of 1978, referred to in subsec. (a), is Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1111. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 5, Government Organization and Employees, and Tables.

The Contracts Disputes Act of 1978, referred to in subsec. (a), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

Rule 172. Review of Board* orders and decisions—How obtained

(a) *Petition for review.* (1) Review of an order or decision of a board shall be obtained by filing with the clerk of the court, within the time prescribed by law, an original and 3 copies of a petition for review. The petition shall specify the party or parties seeking review and shall designate the respondent and the order, decision, or part thereof, to be reviewed. Appendix F sets forth a suggested form of a petition for review.

(2) Where the review sought is that of a final order or decision by the Merit Systems Protection Board, the agency which took the action to which the board's final order or decision was directed shall be designated as the respondent.

(3) Where the review sought is that of a decision by an agency board of contract appeals, and the petitioner is not the United States, the United States shall be designated as the respondent. Where the United States is the petitioner, the other party or parties to the proceeding before the board shall be designated as the respondent or respondents.

(4) If two or more persons are entitled to petition the court for review of the same order and their interests are such to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

(5) Where the petition for review of the final decision of an agency board of contract appeals is filed by the United States pursuant to a referral by the head of an executive department or agency, it shall have attached a certificate evidencing approval by the Attorney General.

(b) *Service of petition.* A copy of the petition for review shall be served by the clerk on the named respondent as provided for in Rule 22, and another copy shall be served on the board to whose decision the petition is directed. Except where the United States is the petitioner, a copy shall always be served on the United States in the manner set forth in Rule 22.

Rule 173. The record on review

(a) *Composition of the record.* The order or decision sought to be reviewed, the findings or report on which it is based, and the pleadings, evidence, and proceedings before the board shall constitute the record on review in proceedings to review the order or decision.

(b) *Omissions from or misstatements in the record.* If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

* The term "board" when used in this chapter shall also include an arbitrator of grievances under a collective bargaining agreement under the Civil Service Reform Act of 1978, when review of the arbitrator's decision is sought pursuant to the authority of 5 U.S.C. § 7121(f).

Rule 174. Filing of the record

(a) *Board to file; time for filing; notice of filing.* The board shall file the record with the clerk of the court within 40 days after the filing of the petition for review, unless a different time is provided by the statute authorizing review. The court may shorten or extend the time above prescribed. The clerk shall give notice to all parties of the date on which the record is filed.

(b) *Filing—what constitutes.* (1) The board may file the entire record or such parts thereof as the parties may designate by stipulation filed with the board. The original papers in the board proceeding or certified copies thereof may be filed.

(2) Instead of filing the record or designated parts thereof, the board may file a certified list of all documents, transcripts of testimony, exhibits, and other material comprising the record, or a list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record.

(3) The parties may stipulate that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the clerk of the court, with a copy to the board, and the date of its filing shall be deemed the date on which the record is filed.

(4) If a certified list is filed, or if the parties designate only parts of the record for filing or stipulate that neither the record nor a certified list be filed, the board shall retain the record or parts thereof. The board shall also retain documents of unusual bulk or weight and physical exhibits other than documents. Upon request to the board by the court or a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation. All parts of the record retained by the board shall be a part of the record on review for all purposes.

Rule 175. Appendix to the briefs

(a) *Contents.* Each party shall reproduce in an appendix to his brief those parts of the record which he desires to call to the court's particular attention. The petitioner shall include in his appendix a copy of the board judgment, order or decision in question, as well as a copy of the board's separate findings (if any). The respondent's brief need not duplicate any material already contained in the petitioner's appendix. Each party's brief shall also contain at the beginning thereof a table of contents or index for the appendix, listing the various items in the appendix, including the number and description of every exhibit which is being reproduced, together with the number of the page of the appendix at which the item begins. When matter contained in the reporter's transcript of proceedings is set out in the appendix, the page of the transcript at which such matter may be found shall be indicated in brackets immediately before the matter is set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) shall be omitted. A question and its answer may be contained in a single paragraph.

(b) *Format.* The appendix may be physically attached to the brief or contained in a separate volume.

(c) *Joint appendix.* By agreement among all parties who file or intend to file briefs, there may be filed, at the same time as petitioner's brief is filed, a joint appendix conforming to Rule 175(a) and covering (without repetition) all those parts of the record which any of such parties desires to call to the court's particular attention.

(d) *Waiver.* Where permission has been granted for the petitioner to proceed in forma pauperis, or by order in any other case, the court may dispense with the requirement of an appendix and permit an appeal or petition to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

(e) *Appendix on Review.* Where an appeal has been referred to a trial judge pursuant to Rules 14(a), 54(a), and 181, and a party requests review by the court of the recommendation of the trial judge, each party may rely on the appendix filed with the original brief or briefs in lieu of repeating it in a subsequent brief, and the clerk will provide the necessary copies of such appendices to the court.

Rule 176. Filing of briefs

(a) *Time for filing briefs.* The petitioner shall file his brief within 45 days after the date on which the record is filed. The respondent shall file his brief within 60 days after service of the brief of the petitioner. The petitioner may file a reply brief within 20 days after service of the brief of the respondent. The court may shorten the periods prescribed above for filing briefs in individual cases.

(b) *Consequence of failure to file briefs.* If a petitioner fails to file his brief within the time prescribed by this rule, or within the time as extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

Rule 177. Form, contents, and copies of briefs, the appendix, and other papers; references to record in briefs

The content, form, and number of copies of briefs, appendices, and other papers shall be in accordance with the requirements of Rules 144, 212, 213 and 214(h). References in the briefs to parts of the record reproduced in an appendix shall be to the pages of the appendix at which those parts appear.

Rule 178. Motion for summary affirmance or to dismiss the appeal

In lieu of including such grounds in its brief, at any time prior to the filing of such brief, the respondent may move for summary affirmance or to dismiss the appeal (as the case may be) on the grounds (but only on such grounds) of lack of jurisdiction of the subject matter or person; the bar of the statute of limitations; failure to exhaust administrative remedies; res judicata;

or payment, accord and satisfaction, or release, subsequent to the administrative decision; but such motion shall not suspend or delay the proceedings. However, the respondent may accompany such motion by a motion to suspend the proceedings or to extend the time for the filing of respondent's brief. A motion for summary affirmance or to dismiss an appeal shall be treated as a dispositive motion.

Rule 179. Offsets and counterclaims

(a) *Raising of offset or counterclaim.* In any case in which an offset or counterclaim is permitted by law, a respondent may file such offset or counterclaim prior to or contemporaneously with its opposing brief. A claim which either matured or was acquired by respondent after serving its brief may, with leave of court, be presented as a counterclaim by supplemental filing. When a respondent fails to set up an offset or counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, it may also, by leave of court, set up the offset or counterclaim by supplemental filing.

(b) *Response to offset or counterclaim.* Petitioner shall have 40 days within which to file a reply to such offset or counterclaim.

(c) *Form of offset or counterclaim.* Such offset or counterclaim and reply shall conform to the requirements of Rule 21(c).

(d) *Action by court on offset or counterclaim.* The court may take action on the offset or counterclaim as the circumstances require, including: dismissal; decision thereon together with or separate from the decision on the appeal; referral to a trial judge for appropriate action; or remand to the board of contract appeals for decision.

Rule 180. Remand; additional evidence

(a) *Remand to Board or Agency.* If in connection with an appeal the court remands a case to an agency or board, except where an offset or counterclaim has been filed and except where the remand order provides otherwise, the appeal shall be removed from the docket and any appeal thereafter shall be treated as a new appeal. Where pursuant to the remand order the case is retained on the docket during the pendency of the remand proceedings, the case shall be assigned to a trial judge, and insofar as pertinent the provisions of Rule 149 shall be applicable.

(b) *Additional evidence by court.* If pursuant to the governing statute the decision of the court is that it should retain the appeal and take such additional evidence as may be necessary for final disposition of the case, the court will refer the case to a trial judge, whose authority and responsibility with respect thereto shall be as set forth in Rule 13.

Rule 181. Referral to trial division

On or before the completion of the briefing on an appeal, a party may suggest the appropriateness and give his reasons for a referral to a trial judge by the court of the appeal. Such a suggestion shall be made by letter to the clerk (original plus 7 copies). A party so suggesting shall promptly mail or otherwise provide a copy thereof to all other parties. Such other parties shall have 10 days in which to submit a letter to the clerk (original plus 7 copies) responding to the suggestion. The court will then determine whether to refer the appeal to a trial judge. Even if no suggestion is submitted, the court may decide to refer the appeal to a trial judge. See Rules 14(a) and 54(a). After such a referral the procedures to be followed shall be the same as those set forth in Rule 54(b).

Rule 182. Appeals from district courts

(a) *When and how taken.* When an appeal to this court is permitted by law from a final judgment in a district court in a civil action based on the Federal Tort Claims Act, the procedure for taking such appeal shall be the same as provided in the Federal Rules of Appellate Procedure, except that no bond will be required in such appeal.

(b) *Proceedings after appeal docketed.* After the appeal has been docketed in this court, all proceedings thereafter in the case shall be as provided in the foregoing Rules of this Chapter XV.

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (a), is classified generally to section 1346(b) and chapter 171 (§ 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Appellate Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

Rule 183. Transfers from district courts

(a) *Filing and fee.* When the transfer of a case from a district court to this court is permitted by law, the case shall be filed in this court upon the receipt by the clerk of a certified copy of the record made in the district court, including the order of that court granting the transfer. The clerk shall serve a notice of this filing on the parties as provided in Rule 23. Where all required fees in the district court are shown to have been paid, no filing fee will be required.

(b) *Petition; Copies.* Sixteen copies of the complaint filed in the district court shall be filed with the clerk of this court within 20 days after the filing required in paragraph (a) of this rule. These copies, containing the necessary changes in the caption, shall be duplicated in conformity with Rule 214(a), and service will be made on the United States as provided in Rule 22(a).

(c) *Procedure.* After the filing and service as provided for in paragraph (b) of this rule, all further proceedings shall be in accordance with the rules prescribed for cases filed in this court in the first instance.

Rule 184. Referral of cases by the Comptroller General

(a) *Service of notice; time for response.* Upon the filing of a case referred to the court by the Comptroller General, the clerk shall serve a notice, as provided in Rule 23, on each person whose name and address are shown by the papers transmitted and who appears to be in-

terested in the subject matter of the reference, which notice shall set forth the filing of the reference and state that the person notified appears to have an interest therein and that such person shall have 90 days after such service within which to appear and assert his claim by filing a petition in accordance with Rule 21. At the same time, the clerk shall forward a copy of each such notice to the Attorney General.

(b) *Procedure after notice.* After the service of notice upon the interested person or persons, all further proceedings for the disposition of the case shall be in accordance with the rules prescribed herein for other cases.

(c) *Failure of party to appear.* If no interested plaintiff appears and files his petition within the time specified in the notice served by the clerk, the case shall be submitted to the court upon the papers filed and upon such evidence, if any, as may be produced by the Attorney General.

XVIII. DUPLICATION; COPIES

Rule 214. Specific papers; duplication; number of copies

[*See main edition for text of (a) and (b)*]

(c) *Procedural motions.* (1) *Duplication.* Any procedural motion (as defined in Rule 52(c)), any objection or response thereto, any brief, memorandum of law, or affidavit included therein or attached thereto (as required by Rule 51(c)), and any request for review pursuant to Rule 53(c) of an order entered pursuant to Rule 53(b)(1), may be typewritten in conformity with Rule 213(c), unless the party elects to have it printed or mimeographed. (See Rule 212(a) and Rule 213(a) and (b) for the requirements of printing, and Rule 213(c) for the requirements of mimeographing.)

(2) *Number of copies.* (i) *General:* Except as provided in subdivisions (ii), (iii), and (iv) of this subparagraph (2), an original and 3 copies of each paper described in the preceding paragraph shall be filed.

(ii) *Request for review; motion for judgment.* An original and 11 copies shall be filed of a request for review pursuant to Rule 53(c), or of a motion for judgment pursuant to Rules 54(b)(3)(iii) and 141(b).

[*See main edition for text of (iii) and (iv)*]

(d) *Dispositive motions.*

[*See main edition for text of (1)*]

(2) *Number of copies.* An original and 15 copies of each paper described in the preceding subparagraph (1) of this paragraph (d) shall be filed, plus 2 additional copies for each additional adverse party, as defined in Rule 211(b).

[*See main edition for text of (e) to (i)*]

XIX. FEES

Rule 224. Fees in cases appealed to this court

A filing fee of $10 shall be collected by the clerk for any appeal (other than an appeal by the United States) filed in the court.

APPENDIX C

PROCEDURE IN COMMON CARRIER CASES

[*See main edition for text of Table of Contents*]

PROCEDURE IN COMMON CARRIER CASES

[*See main edition for text of I*]

II. DEFENDANT'S RESPONSE

[*See main edition for text of (4) to (11)*]

12. *Relation to pleadings; time for filing answer or counterclaim.* In all cases to which this order applies, the time for filing defendant's answer and any counterclaim asserted by it may, without regard to the provisions of Rules 38 and 40, be contemporaneous with the date fixed by the trial judge for filing defendant's response to plaintiff's request; provided, however, that the period of limitations provided by 49 U.S.C. § 16(3)(d) within which the defendant may file a counterclaim is not extended by any rule set forth in this Appendix or by any order pursuant thereto. At its option, the defendant may include the response in its answer or counterclaim, which pleadings, nevertheless, shall otherwise comply with the rules applicable to them.

[*See main edition for text of III to VI*]

APPENDIX F

FORM OF PETITION FOR REVIEW FOR APPEAL AUTHORIZED BY LAW

The following is a form for petition for review under the Contract Disputes Act of 1978, 92 Stat. 2383, §§ 8(g)(1) and 14(h), and Civil Service Reform Act of 1978 (5 U.S.C. § 7703).

IN THE UNITED STATES COURT OF CLAIMS

———————

No. ——

(Filed ————)

A.B.C., Petitioner*
v.
THE UNITED STATES,
Respondent**
} Petition for Review

A.B.C. hereby petitions the court for review of the order of (identify Board of Contract Appeals or Merit Systems Protection Board and describe order) entered on ——, 19—.

———————
Attorney for Petitioner
Address: ————

BY THE COURT
/s/ DANIEL M. FRIEDMAN
Chief Judge

*If the United States is petitioner, the party or parties in the proceedings before the Board of Contract Appeals are designated as respondent.

**If for review of an order or decision of the Merit Systems Protection Board, substitute name of relevant agency as required by 5 U.S.C. § 7703(a)(2).